



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, सोमवार, 7 सितम्बर, 2009/16 भाद्रपद, 1931

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2, the 1st September, 2009

No. Shram (A) 7-1/2005 (Award).—In exercise of the powers vested in him under section 17(1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to order the publication of the following awards announced by the Presiding Officer, Labour Court, Shimla in the Rajpatra, Himachal Pradesh :—

Sl. No.	Case No.	Title of the case	Date of Award
1.	154/2002	S/Shri Roop Dass Vs. XEN, HPSEB, Division, Sunni, District Shimla.	14-05-2009
2.	40/2007	Datta Ram Vs. XEN, IPH Division, Arki, Solan.	30-05-2009
3.	52/2003	Joginder Singh Vs. XEN, HPSEB, Division, Parwanoo, District Solan.	27-05-2009

4.	37/2003	Surinder Singh Vs. XEN, HPSEB, Division, Parwanoo, District Solan.	27-05-2009
5.	63/2006	Chandermani Vs. Smt. Archana Rani, Proprietor, M.s Accurex Engg. Workers, Parwanoo.	2-05-2009
6.	40/2003	Shyam Lal Vs. XEN, HPSEB, Division, Parwanoo, District Solan.	27-05-2009
7.	55/2006	Bharat Bhushan Vs. Regional Potato Development Officer, Department of Horticulture, Shillaru.	25-05-2009
8.	44/2003	Gurbachan Singh Vs. XEN, HPSEB, Division, Parwanoo, District Solan.	27-05-2009
9.	52/2006	Tulsi Ram Vs. Managing Director, HRTC and Ors.	26-05-2009
10.	147/2006	Rameshwar Dass Vs. Management M/s Ghee Claridge Moulded Fibers Ltd., Nalagarh, Solan.	26-05-2009
11.	34/2003	Rajiv Kumar Vs. The Registrar, Dr. Y. S. Parmar University of Horticulture and Forestry, Nauni, Solan.	07-05-2009
12.	76/2003	Smt. Rattni Devi Vs. The Registrar, Dr. Y. S. Parmar University of Horticulture and Forestry, Nauni, Solan.	07-05-2009
13.	77/2003	Mrs. Santosh Devi Vs. The Registrar, Dr. Y. S. Parmar University of Horticulture and Forestry, Nauni, Solan.	07-05-2009
14.	172/2002	Mrs. Surinder Sharma Vs. The Registrar, Dr. Y. S. Parmar University of Horticulture and Forestry, Nauni, Solan.	07-05-2009
15.	120/2004	Nand Kishore Vs. The Director, Himalyan Forest and Agro Products Pvt. Ltd., Paonta Sahib.	14-05-2009
16.	173/2006	Khub Chand Vs. XEN, HPSEB, Division, Sunni, District Shimla.	23-05-2009
17.	102/2001	Joginder Singh Vs. XEN, HPSEB, Bhawa Nagar, Kinnaur.	25-05-2009
18.	125/2004	Fauj Ram Vs. Commissioner, Municipal Corporation, Shimla & Ors.	26-05-2009
19.	121/2006	Jasvinder Singh Vs. M/s Ozone Ayurvedics Ltd., Baddi, Solan.	16-05-1009
20.	239/2003	Kehar Singh Vs. XEN, HPSEB, Rampur, Shimla.	04-05-2009
21.	118/2006	Avtar Singh Vs. M/s Ozone Pharmaceutical Ltd. Baddi, Solan.	16-05-2009
22.	34/2007	Ram Lal Vs. The DGM, Satluj Jal Nigam Ltd.	08-05-2009
23.	05/2006	Smt. Kamlesh Vs. C. E. O., Shimla.	12-05-2009
24.	22/2007	President, H. P. Kandi Project Workers Union Vs. Assistant Project, Nalagarh.	04-05-2009
25.	30/2007	Smt. Lalita Jindal Vs. DFO, Solan.	12-05-09
26.	158/2003	Jagdish Singh Vs. Manager Partner M/S Ashiana Bar & Restaurant, Shimla.	08-05-09

This supersedes the earlier notification of even number dated 16-07-2009.

By order,
Sd/-
ACS (Lab & Emp.)

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, HP.**

Ref No. 154 of 2002.
Instituted on.29.5.2002.
Decided on.14.5.2009.

Roop Dass S/o Shri Hazaru Ram R/o village & P.O Kadarghat, Tehsil Sunni, District Shimla,HP.

..Petitioner

Vs.

The Executive Engineer, HPSEB Division, Sunni District Shimla, HP.

..Respondent

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.R Sharma, Ld. Csl.

For respondent : Shri Bhagwan Chand, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“कि क्या श्री रूप दास सपुत्र श्री हजारु राम कामगार को उप-मण्डल अधिकारी, हि0 प्र0 राज्य विद्युत परिषद्, उप-मण्डल सुन्नी, जिला शिमला द्वारा समयबद्ध कार्य की समाप्ति पर दिनांक 25-9-1993 के पश्चात् नौकरी से बिना किसी नोटिस के निकाला जाना उचित एवं न्यायसंगत है ? अगर नहीं, तो श्री रूप दास सपुत्र श्री हजारु राम कामगार किस वेतन, वरिष्ठता, सेवा लाभ एवं राहत का पात्र है ?”

2. The petitioner has filed a claim asserting therein that he was initially appointed as daily rated beldar in the year 1991 with the respondent, who worked till 30.8.1993 and then the services of the petitioner have been terminated without assigning any reason and that the petitioner had completed 240 days in a calendar year and even preceding to the date of his termination and that the petitioner has unblemished record of his service, who never gave an opportunity of complaint and that the petitioner made several requests seeking reemployment by visiting the office of the respondent but in vain and that the respondent while terminating the services of the petitioner has violated the provisions of Industrial Disputes Act, 1947 and that the respondent never charge sheeted the petitioner before his termination and that the respondent has also failed to tender retrenchment compensation on account of services rendered by the petitioner and that the respondent recruited the fresh hands in the employment and that the respondent is required to maintain the seniority of the workmen to offer employment and as such prayed for reinstatement with retrospective effect alongwith all consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner which filed reply inter alia raising preliminary objections maintainability, delay and latches and that the petitioner has no legal enforceable cause of action against the respondent and that the petition is not properly instituted and constituted. On merits, it is contended that the petitioner was engaged on muster roll as daily wages beldar against the work of electrical Sub Division Sunni which was purely casual in nature, who was disengaged on the completion of the specific work against which the petitioner was engaged, who was engaged on three different spells under electrical sub division HPSEB and not completed 240 days in any calendar year, who was engaged w.e.f. 26.1.1991 to 25.10.1991 and worked for 116 days, 3.2.1992 to 25.10.1992 and worked for 139 days and 2.3.1993 to 25.9.1993 and worked for 165 days and as such the petitioner has not completed 240 working days in any calendar year, who was engaged for specific and emergent work and that the petitioner never gave any application for employment with the respondent and as such the principle of natural justice has not been violated by the respondent, hence prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 9.6.2005 on the pleading of the parties:—

1. Whether the retrenchment of the petitioner by the respondent w.e.f. 26.9.1993 on completion of specific work on 25.9.1993 without any notice is legal and justified? OPR
2. Whether the petition is not maintainable? OPR
3. Whether the petition suffers from delay and latches & if so, its effect? OPR
4. Relief.

6. I have heard the Ld. Csls. For the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes.
Issue No. 2	No.
Issue No. 3	No.
Relief.	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS.

Issue No. 1:

8. Coming to issue no.1, the petitioner has examined himself as PW-1, who has stated that he was engaged by the respondent no.2 w.e.f. Jan. 1991 whose services were dispensed with by the respondent w.e.f. 30.8.1993 without any reason, who worked for 240 days in the year 1991, five/six months in 1992 and eight/nine months in 1993. No notice nor compensation was given to him and the respondent has engaged junior persons S/Shri Atma Ram, Gain Chand Dharam Dass, Chet Ram and Gurdial, who are still working with the respondent and there was no complaint against his work, who approached the Junior Engineer Basantpur for reengagement but he was told that other persons have already been engaged and as such prayed for reinstatement with all consequential benefits including seniority and back wages.

9. To rebut the case of the petitioner, the respondent has examined RW-1 Er. Yog Raj Sharma has stated that the petitioner was engaged with the respondent w.e.f. 26.1.1991 to 25.10.1991 and then the petitioner was reengaged w.e.f. 3.2.1992 to 25.10.1992, who was again engaged w.e.f. 2.3.1993 to 25.9.1993, who worked in three different spells and the copy of mandays chart is mark X and at the time of first engagement of the petitioner, who was informed that his services would be engaged for specific work, who worked with the respondent in two-three spells as the work was not available continuously and as such the petitioner was called for work in two three spells, who has not completed 240 days in a calendar year and on the completion of the work, the services of the petitioner automatically came to an end and even the petitioner has not made any written request with the respondent and the respondent had not engaged any junior to the petitioner and the mandays chart is prepared on the basis of the record.

10. The case of the petitioner is that he being a daily wages beldar having worked for more than 240 working days in a calendar year and even junior to him are still working with the respondent and his termination without notice or compensation is violative of the provisions of Industrial disputes Act, 1947, hence is entitled for his reengagement alongwith all consequential benefits.

11. On the contrary, the respondent contends that the petitioner has not worked with the respondent for 240 working days in a calendar year preceding his termination, who was engaged only for seasonal work and after the completion of the work his services automatically came to an end and even no junior to the petitioner are retained by the respondent, hence is not entitled to any relief.

12. I have considered the respective contention of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged by the respondent as daily wages beldar w.e.f. 26.1.1991 to 25.10.1991, who was reengaged w.e.f. 3.2.1992 to 25.10.1992, who was again engaged w.e.f. 2.3.1993 to 25.9.1993 as per mandays chart mark X placed on record which was not disputed by the petitioner. No doubt, that the petitioner has tried to establish on record that he was engaged as daily wages beldar and has completed 240 working days in a calendar year preceding his termination. The petitioner has admitted in his cross-examination that he was engaged with the respondent as and when there was work available and as such it is clear that the petitioner was engaged for seasonal work and for specified period whose services were dispensed with on the completion of the work. Moreover, it is well settled in **(2006) 6 SCC 221, case titled as Reserve Bank of India V. Gopinath Sharma & Anr. In which it was held that:**

“Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held, had no right to the post.”

14. Similarly in **2006 (2) SCC 794 in case titled as Haryana State Agricultural Marketing Board V. Subhash Chand & Anr.** In which it was held that:-

“If nature of service does not come within purview of definition of retrenchment in section 2(oo), question of applicability of section 25-G does not arise. Bare perusal of offer of appointment (set out in para 2 herein) clearly shows that respondent was appointed on seasonal contracts. Hence, respondent not having been reengaged on expiry thereof, he was not retrenched within meaning of section 2(oo), and his case fell exception in section 2(oo)(bb). Hence, section 25-G was inapplicable in his case and dispensing with engagement of respondent cannot be said to be unwarranted in law.”

15. Apart from it was further held incase titled as **Punjab State Electricity Board V. Darbara Singh reported in 2006 LLR 68 SC.** and incase titled as **Municipal Council Samrala V. Sukhwinder Kaur reported in 2006 LLR 1009 SC.** In which it was held that:-

“material on record established that engagement of workman was for specific period and as such his termination will be excluded as per the provisions of section 2(oo)(bb) of the I.D Act and hence, no retrenchment compensation will be payable on his termination even when he has worked for more than 240 days in the preceding 12 calendar months.”

Now, turning to the other aspect of the case, the petitioner tried to establish on record that his juniors are still continuing with the respondent department but he did not prove on record that on which date they joined the department and infact they were juniors to the petitioner. Moreover, the petitioner was engaged for specific work and for specific time as per the need of the work and as such it does not lie in the mouth of petitioner to claim any right over the post which was offered to him for specific period and for specific work and therefore, the case of petitioner cannot be accepted for his reinstatement keeping inview the entire facts and circumstances of the case.

16. Thus, having regard to the entire evidence and inview of the above cited rulings, it can safely be concluded that the retrenchment of the petitioner by the respondent w.e.f. 26.9.1993 on completion of the specific work on 25.9.1993 without any notice is legal and justified. Accordingly, issue no.1 is decided in favour of respondent and against the petitioner.

Issue No. 2.

17. In support to this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.2 is decided in favour of petitioner and against the respondent.

Issue No. 3.

18. In support to this issue, no evidence was led by the respondent being the legal issue. However I have scrutinized the record of the case and observed that there is no limitation under the I.D Act as it was held by their lordships of ***Hon’ble Supreme Court reported in (1999) 6 SC 82 case titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another*** in which it was held that:-

“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Accordingly, on the strength of this ruling, it can safely be concluded that this petition is not barred by limitation. Accordingly, issue No.3 is decided in favour of petitioner and against the respondent.

Relief.

As a sequel to above discussion and findings on issue no.1 to 3, the claim of the petitioner fails and is hereby dismissed and the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 12th day of May, 2009 in the presence of parties.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING
JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA, HP CAMP AT NAHAN.

Ref no. 40 of 2007.

Instituted on 21.4.2007.

Decided on. 30.5.2009.

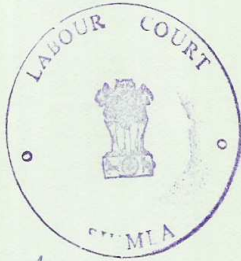
Datta Ram S/o Shri Nathu Ram R/o Village & P.O
Bhiunkan, Tehsil Nalagarh, District Solan, HP.

Petitioner.

Vs.

The Executive Engineer, I & P H Division Arki,
District Solan, HP.

Respondent.



Reference under section 10 of
the Industrial Disputes Act,
1947.

For petitioner
For respondent

: Shri A.K Gupta, Ld. Csl.

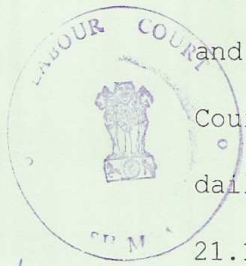
: Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been
received from appropriate government by this Court
for adjudication:-

"Whether the demand raised by Shri Datta
Ram S/o Shri Nathu Ram through Bhartiya
Mazdoor Sangh Ram Shehar unit, Distt. Solan,
HP vide demand notice dated 6.5.2003 (copy
enclosed) before the Executive Engineer, I&PH
Division Arki District Solan, HP not to
promote him on the post of Mechanic-cum-Fitter
Grade-I w.e.f. 1.4.1998 is proper and
justified? If yes, what relief of service
benefits, the aggrieved workman as per demand
notice? If not what its legal effects?"

2. The petitioner has filed a claim asserting therein that he is a member of Bhartiya Mazdoor Sangh, which is a recognized and registered trade union under the Trade Union Act and the petitioner brought his grievances to the notice of the union whose cause espoused by the union and the conciliation proceedings took place and after its failure the matter was sent to this Court and that the applicant was appointed on daily wages basis in the year 1987 and upto 21.1.1989, he performed the various duties such as Pump Operator etc. w.e.f. 21.1.1989, he performed the duties of Mechanic-cum-Fitter Grade-I and the muster roll in this behalf was issued to the applicant and that incase Mool Raj Upadhaya V. State of HP, the Hon'ble Supreme Court of India ruled that all those workmen who completed ten years of service would be given the work charge status from the date they completed ten years of service and the petitioner completed the said span of service upto the said date but instead of appointing him as work charged/regular Mechanic - cum-Fitter Grade-I, the services of the petitioner were regularized in Grade-II which is not at all justified and not inconsonance with law and that the petitioner performed the duties of Mechanic-



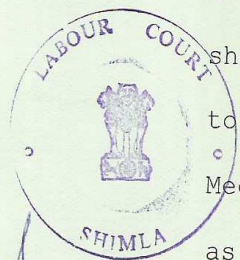
[Signature]
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla

cum-Fitter Grade-I throughout and the action of the respondents in not regularizing the services of the applicant as Mechanic-cum-Fitter Grade-I w.e.f. 1.4.1998 is unjustified, arbitrary and also violative of Articles 14 & 16 of the Constitution of India and as such prayed for promotion as Mechanic -cum-Fitter Grade-I w.e.f. 1.4.1998 with all benefits incidental thereof, hence this claim.



[Signature]
Presiding Judge,
H.P. Industrial Tribunal,
Labour Court, Shimla

3. The respondent resisted and contested the claim of the petitioner, which filed reply inter alia raising preliminary objections of estoppel and the applicant having worked on various posts on daily wages such as beldar, Fitter, Pump Operator and mechanic, who was offered the post of Mechanic Grade-II which is the lowest post in the category of mechanic-cum-Fitter vide appointment order dated 21.7.1999 w.e.f. 1.4.1998, who joined on 24.7.1999, hence barred by limitation, jurisdiction and maintainability. On merits, it is contended that the petitioner worked as Pump Operator for only 13 days and thereafter as Motor Mechanic, who was regularized in 1999 w.e.f. 1.4.1998 as Mechanic-cum-Fitter Grade-II, who joined on 24.7.1999 A.N and that the petitioner was appointed under the policy as framed by the Government and in the matter of Mool



[Signature]
 Presiding Judge,
 H.P. Industrial Tribunal-cum-
 Labour Court, Shimla

Raj Upadhyaya's Vs. State of HP, the Hon'ble Supreme Court of India had laid down that daily waged workers should be regularized after putting in ten years continuous daily wages services with a minimum of 240 days in each calendar year and should be put in the time scale of pay applicable to the corresponding post i.e Rs. 3120-5160 for Mechanic-cum-Fitter Grade-II and not Rs. 4020-6200 as this post carrying pay scale of Rs. 4020-6200 which was promotional post as per R&P Rules and to August 1997 all the posts including Mechanic-cum-Fitter have been re-designated as Junior Technician and that the petitioner was regularized to the corresponding lowest grade in the cadre and the Mechanic-cum-Fitter Grade-I was purely a promotional post and as such prayed for the dismissal of the claim.

4. No rejoinder filed. The following issues were framed by this Court on 29.7.2008 on the pleadings of the parties:

1. Whether the demand raised by Shri Data Ram S/o Shri Nathu Ram through Bhartiya Mazdoor Sangh before the XEN I&PH, Arki not to promote him on the post of Mechanic -cum- Fitter Grade-I w.e.f. 1.4.1998 is improper and unjustified as alleged?

OPP....

2. If issue no.1 is proved to what benefits the petitioner is entitled to and since when?

OPP.....

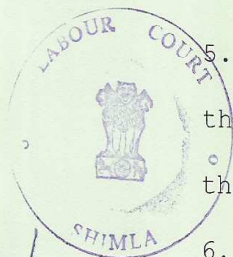
3. Whether the petition is not maintainable as alleged?

OPR.....

4. Whether the petition is barred by limitation?

OPR.....

5. Relief.



5. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1.	No
Issue no. 2.	Not entitled to any relief.
Issue no.3.	No.
Issue no.4.	No.
Relief.	Reference answered in negative per operative part of award.

Reasons for findings.

Issue no.1.

7. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged as Fitter with IPH Sub Division Ramshehar on daily wages in May, 1987, who also stated that he also worked as beldar in between

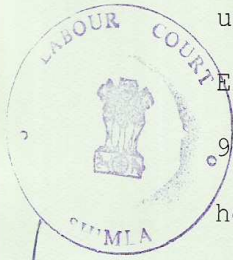
from time to time, who is still in the job as Mechanic-cum-Fitter Grade II in the pay scale of Rs. 3120-5160/- whereas the actual scale of Grade -II is 4020-6200, who is not getting the scale of 4020-6200/- and he is entitled for the same, who had worked as Mechanic-cum-fitter Grade-I since Jan. 1989 till 31.3.1998, who was regularized on 1.4.1998 as Mechanic-cum-Fitter Grade-II and as such prayed that he may be made as Fitter-cum-Mechanic Grade-I and also be given the scale of Grade-II for the period, he served as Fitter-cum-Mechanic Grade-II.



[Signature]
 Presiding Judge,
 H.F. Industrial Tribunal cum
 Labour Court, Shimla

8. To rebut the case of the petitioner, the respondent has examined Er. Neeraj Kumar, as RW-1, who has stated that the petitioner was initially engaged as fitter on muster roll basis in the year 1987, who also worked as beldar on muster roll and some time worked as Mechanic-cum-Fitter and then as Pump Operator and thereafter considering the services of the petitioner, he was offered the post of Mechanic-cum-Fitter Grade -II by the respondent on 1.4.1998 vide letter Ex. RA, who accepted the post under protest on 24.7.1999 as is evident from his joining report Ex. RB. The petitioner claims promotion as Mechanic-cum-Fitter Grade-I, who is not entitled to this post as it is

a promotional post as per R&P Rules and the petitioner raised this dispute after nine years of his appointment and proved the mandays chart of the petitioner Ex. RC. The government has filed the categories of skilled and semi skilled workers under various departments of HP vide notification Ex. RD and the list of categories is Ex. RD1.



9. The case of the petitioner is that

he was wrongly regularized as Mechanic-cum-Fitter Grade-II by the respondent whereas he worked as Mechanic-cum-Fitter Grade-I with the respondent, hence he is entitled for the promotion of Mechanic-cum-Fitter Grade-I.


10. On the contrary, the respondent contends that the petitioner was rightly made Mechanic-cum-Fitter Grade-II as the post of Mechanic-cum-Fitter Grade-I is the promotional post which is defined in R&P Rules of State Government, hence the petitioner is not entitled for the post of Mechanic-cum-Fitter Grade-I.

11. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it is clear that the petitioner has staked the claim on the post of

Mechanic-cum-Fitter Grade-I without any basis and foundations. According to him, he had worked as Mechanic cum Fitter Grade-I with the respondent but there is nothing on record which could show that the petitioner had worked as Mechanic cum Fitter Grade-I at any point of time. Moreover, it is borne out from the record that the post of Mechanic-cum-Fitter Grade-II was offered to the petitioner which was accepted by him and therefore, it does not lie in the mouth of the petitioner to claim the higher post which is purely a promotional post under the R&P Rules and as such the petitioner cannot claim such higher post being promotional post without competing for it as per the eligibility for the said post. Apart from it, Ld. Counsel for petitioner could not convince me during the course of arguments as to how the petitioner is liable to be promoted as Mechanic-cum Fitter Grade-I without any basis especially when it is promotional post under the R&P rules and further there is no iota of evidence on record to show that the petitioner had ever worked as Mechanic-cum-Fitter Grade-I at any point of time and obviously therefore I have no hesitation in coming to the conclusion that the demand raised by Shri Datta




Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla.

- 11 -

As a sequel to my above discussion and findings on issue no.1 to 4, the claim of the petitioner fails and is hereby dismissed as a result of which the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 30th Day of May 2009 in the presence of parties counsels.

(Parveen)



(J. S. Mahantani)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla
camp at Nahan.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

Ref No. 52 of 2003.
Instituted on. 4-2-2003
Decided on. 27-5-2009.

Joginder Singh S/o Shri Bir Singh R/o Village Rahtoan Wala P.O Lodhi Majra, Tehsil Nalagarh, District Solan, HP. ..Petitioner.

Vs.

The Executive Engineer, HPSEB Division, Parwanoo, Distt. Solan HP. ..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Virender Singh, Ld. Csl.

For respondent : Ms. Shilpa Sood, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication :

“Whether the termination of the services of Shri Joginder Singh s/o Shri Bir Singh daily wages beldar by the Executive Engineer, HPSEB division, Parwanoo Distt. Solan HP w.e.f. July, 1998 without complying with the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief, the aggrieved workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that he was engaged as beldar by the respondent in the year 1990, who continued as such till 1.1.2000 with utmost sincerity and devotion and no complaint was there against the petitioner, who was terminated orally after completion of 240 days in the last preceding twelve months and that the petitioner approached the respondent for reengagement but all in vain and that after his termination, he was never called to resume his duties by the respondent and that the termination of the petitioner is in violation of standing orders formulated by the HPSEB and that no opportunity of being heard was afforded to the petitioner before terminating his services and as such prayed for reinstatement with all consequential benefits from the date of his illegal termination, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of the petitioner, which filed reply inter alia raising preliminary objections that the petitioner has no enforceable cause of action against the respondent and that no legal or vested right of the petitioner have been infringed or violated by the respondent, barred by delay and laches and not maintainable. On merits, it is contended that the petitioner was engaged as beldar on 1.6.1993, who worked upto 25.4.1999 with breaks and did not turn up for duty after 25.4.1999, who himself abstained the job wilfully without intimation and if the petitioner approached the respondent, he would be adjusted some other area where the work was available at that time, who had not completed 240 days in any calendar year as per annexure RA-1 and since the petitioner left the job of his own, hence the notice as per Industrial Disputes Act, 1947 was not required to be served upon him, who was never terminated from service and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this court on 20.11.2006 on the pleadings of the parties:—

1. Whether the service of the petitioner has been illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947? If so, its effect? ..OPP
2. If issue No. 1 is proved in affirmative, to what relief the petitioner is entitled to? ..OPP
3. Whether the petition is not maintainable and the claim is barred by limitation? ..OPR
4. Relief

6. I have heard the Ld. Csls. for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	No.
Issue No. 2	Not entitled to any relief.
Issue No. 3	No.
Relief.	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS.

Issue No. 1.

8. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged as beldar on daily wages basis in the year 1990 and worked as such till 2000, who was sent for work to Baddi, Barotiwala and Parwanoo and when he was sent to different working places, his attendance was not marked on the pretext that attendance would be marked by the respective Sub Divisions whose services were terminated on 1.1.2000, who visited the office of respondent several times for his reengagement but in vain. No notice nor compensation was paid to him at the time of his termination. His juniors S/Shri Rajkumar, Ram Lal and others were engaged by the respondent who are still working with the respondent.

9. To rebut the case of the petitioner, the respondent examined Er. J.S Rana as RW1, who has stated that the petitioner was engaged as a beldar on daily wages w.e.f. 1.6.1993 and continued as such till 21.4.1999 and the petitioner has not completed 240 working days in any calendar year preceding his termination, who worked for 92 days in 1998 and 10 days in 1999 and proved the copy of mandays chart Ex. RA. The petitioner abandoned the job of his own after 21.4.1999, who never approached the respondent for his reengagement and no junior to the petitioner was engaged by the respondent at any point of time.

10. The case of the petitioner is that he being the daily wages beldar having worked for more than 240 days in each calendar year preceding his termination, who was illegally terminated by the respondent without following the mandatory provisions of Industrial Disputes Act, 1947 and even after his termination, junior persons are retained by the respondent and as such he is also entitled for his reinstatement in service with all consequential benefits alongwith back wages.

11. On the contrary, the respondents contend that the petitioner was never terminated from service, who abandoned the job of his own without any intimation to his superior and no junior to the petitioner was retained by the respondent, hence the petitioner is not entitled to any relief as prayed by him.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner was working under the respondent as daily wages beldar and according to the petitioner he was terminated by the respondent from service without any notice and without compensation on completion of 240 working days in a calendar year preceding his termination but there is nothing on record which could show that the petitioner has completed 240 working days in twelve calendar months preceding his termination. Apart from oral evidence, the petitioner has not produced any evidence to prove the fact that he had worked for more than 240 days in a calendar year. The mandays chart relied upon by respondent has revealed that the petitioner has not completed 240 working days in any preceding calendar year. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; mandays chart produced by the respondent employer has not been contradicted and as such the petitioner has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service and as such the petitioner is not entitled for protection of Section 25-F before his service was terminated. Here I am fortified with a view taken by their lordships of Hon'ble Supreme Court in **AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amarsingh** in which it was held that:-

“In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted—Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service—Workman not entitled for protection of Section 25-F before his service was terminated.”

14. It is also the case of the petitioner that the respondent has violated the provisions of Rule 14 (ii) of Standing Orders of HPSEB as no notice was given to him before his termination. Here, I am fortified with a view

taken by our own High Court that no notice was required to be given to the petitioner by HPSEB even if the employment is below one year, as it was held in *Executive Engineer Joginder Nagar & Sanju S/O Sh. Gantu Ram, Vill Dalana, P.O. Ballhjoli, Tehsil. Jogindernagar, Distt. Mandi H.P. & Presiding Officer, Labour Court-Cum-Industrial Tribunal, Dharamsala in CWP No. 1383 of 2005* in which it was held that :-

“The HP State Electricity Board shall be exempted from all the provisions of standing Orders Act, and thereafter, no 10 days notice is required to be given under Standing Orders to the employee. Admittedly, the employees had not completed 240 days and the Tribunal could not have come to the rescue of the employee.”

Thus, the petitioner is not entitled to any service benefits as he has failed to prove that he had worked for 240 days in twelve calendar months preceding his termination.

15. Now, adverting to the other aspect of the case, the petitioner has tried to establish on record that the respondent retained his juniors in the service while his services were terminated by an oral order. I find no force in this contention as the petitioner has failed to prove on record as to when his juniors joined the services of respondents department as daily wages beldar and whether they are still continuing in service. On the other hand, the respondents have proved on record that the alleged juniors named by the petitioner are not the juniors to the petitioner and therefore, it does not lie in the mouth of the petitioner to say that his juniors are retained in service, who are still continuing with the respondent department especially when it is not proved on record that the juniors to the petitioner are still continuing in service with the respondents and as such this contention is rejected being devoid of force.

16. Thus, having regard to entire evidence on record and in view of the fact that the respondent has proved on record that the petitioner remained absent from his duties, who never turned up to his duties as per mandays chart Ex. RA, who never completed 240 working days in any calendar year preceding his termination. The petitioner has miserably failed to prove on record that he had put in 240 working days in twelve calendar months preceding his termination. Obviously therefore, it can safely be concluded that the services of the petitioner have not been illegally terminated by the respondent department. Accordingly issue no.1 is decided in favour of respondent and against the petitioner.

Issue No. 2.

17. Since I have held under issue no.1 above that the services of the petitioner have not been illegally terminated by the respondent, hence the petitioner is not entitled to any relief. Accordingly, issue no.2 is decided in favour of respondent and against the petitioner.

Issue No. 3.

18. In support of this issue, no evidence was led by the respondents. However I find nothing wrong with this claim which is perfectly maintainable and also observed that there is no limitation under the Industrial Disputes Act, 1947, as it was held by their lordship of *Hon'ble Supreme Court reported in (1999) 6 SCC 82 case titled as Ajayab singh Vs. Sirhind Co-operative Marketing -cum- processing Service Society Limited and Another*. In which it was held that:-

“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Thus, on the strength of this ruling, it can safely be concluded that there is no limitation under the Industrial Disputes Act, 1947. Accordingly, this issue is decided in favour of petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on Issue No. 1 to 3, the claim of the petitioner fails and is hereby dismissed and the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 27th day of May, 2009 in the presence of parties counsels.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Labour court, Shimla.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA.**

Ref No. 37 of 2003.
Instituted on. 4-2-2003
Decided on. 27-5-2009.

Surinder Singh S/o Shri Tharu Ram R/o Village Landewal P.O Baddi, Tehsil Nalagarh, District Solan, HP.
..Petitioner.

Vs.

The Executive Engineer, HPSEB Division, Parwanoo, Distt. Solan HP. ..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner :Shri Virender Singh, Ld. Csl.

For respondent : Ms. Shilpa Sood, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication :

“Whether the termination of the services of Shri Surinder Singh s/o Shri Tharu Ram daily wages beldar by the Executive Engineer, HPSEB division, Parwanoo Distt. Solan HP w.e.f. 1.1.2000 without complying with the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief, the aggrieved workman is entitled to?”

2. The petitioner has filed statement of claim asserting therein that he was engaged as beldar by the respondent in the year 1990, who continued as such till 1.1.2000 with utmost sincerity and devotion and no complaint was there against the petitioner, who was terminated orally after completion of 240 days in the last preceding twelve months and that the petitioner approached the respondent to reengagement but all in vain and that after his termination, he was never called upon to resume his duties by the respondent and that the termination of the petitioner is in violation of sections 25-F, G, N & H of the Industrial disputes Act, 1947 and also in violation of standing orders formulated by the HPSEB and that no opportunity of being heard was afforded to the petitioner before terminating his services and as such prayed for reinstatement with all consequential benefits from the date of his illegal termination, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections that the petitioner has no enforceable cause of action against the respondent and that no legal or vested right of the petitioner has been infringed or violated by the respondent, barred by delay and laches and not maintainable. On merits, it is contended that the petitioner was engaged as beldar on 26.6.1981 and then the petitioner abandoned the job of his own, who was reengaged after a long spell of time, who worked upto 20.12.1999 with breaks and did not turn up for duty after 21.12.1999, who himself abstained the job wilfully without intimation, who had not completed 240 days in any calendar year and since the petitioner left the job of his own, hence the notice as per Industrial Disputes Act, 1947 was not required to be served upon him nor any compensation was payable to him, who was never terminated from service and as such prayed for dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this court on 20.11.2006 on the pleadings of the parties.

1. Whether the service of the petitioner has been illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947? If so, its effect? ..OPP
2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to? ..OPP
3. Whether the petition is not maintainable and the claim is barred by limitation? ..OPR
4. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No.1	No.
Issue No.2	Not entitled to any relief.
Issue No.3	No.
Relief.	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS.

Issue No. 1.

8. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged as beldar in the year 1990 and worked as such till 2000, who was sent for work to Baddi, Barotiwala and Parwanoo and when he was sent to different working places his attendance was not marked on the pretext that attendance would be marked by the respective Sub Divisions whose services were terminated on 1.1.2000, who visited the office of respondent several times for his reengagement but in vain. No notice nor compensation was paid to him at the time of his termination. His juniors S/Shri Rajkumar, Ram Lal and others were engaged by the respondent, who are still working with the respondent.

9. To rebut the case of the petitioner, the respondent examined Er. J.S Rana as RW1, who has stated that the petitioner was engaged as a beldar on daily wages w.e.f. 26.6.1981 and continued as such till 20.12.1999 and the petitioner has not completed 240 working days in any calendar year preceding his termination, who did not work for a single day in 1998 and worked for 124 days in 1999 and proved the copy of mandays chart Ex. RA. The petitioner abandoned the job of his own after 20.12.1999, who never approached the respondent for his reengagement and no junior to the petitioner was engaged by the respondent at any point of time.

10. The case of the petitioner is that he being the daily wages beldar having worked for more than 240 days in each calendar year preceding his termination, who was illegally terminated by the respondent without following the mandatory provisions of Industrial Disputes Act, 1947 and even after his termination, junior persons are retained by the respondent and as such he is also entitled for his reinstatement in service with all consequential benefits alongwith back wages.

11. On the contrary, the respondent contends that the petitioner was never terminated from service, who abandoned the job of his own without any intimation to his superior and no junior to the petitioner was retained by the respondent, hence the petitioner is not entitled to any relief as prayed by him.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner was working under the respondent as daily wages beldar and according to the petitioner he was terminated by the respondent from service without any notice and without compensation on completion of 240 working days in a calendar year preceding his termination but there is nothing on record which could show that the petitioner has completed 240 working days in twelve calendar months preceding his termination. Apart from oral evidence, the petitioner has not produced any evidence on record to prove the fact that he has worked for more than 240 days in a calendar year preceding his termination. The mandays chart relied upon by respondents has revealed that the petitioner has not completed 240 working days in any preceding calendar year. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; mandays chart produced by the respondent employer has not been contradicted and as such the petitioner has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service and as such the petitioner is not entitled for protection of Section 25-F before his service was terminated. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in *AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amarsingh* in which it was held that:-

“In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”

14. Moreover, it is also the case of the petitioner that the respondent has violated the provisions of Rule 14 (ii) of Standing Orders of HPSEB as no notice was given to him before his termination. Here, I am fortified with a view taken by our own High Court that no notice was required to be given to the petitioner by HPSEB even if the employment is below one year, as it was held in *Executive Engineer Joginder Nagar & Sanju S/O Sh. Gantu Ram, Vill Dalana, P.O. Ballhjoli, Tehsil. Jogindernagar, Distt. Mandi H.P. & Presiding Officer, Labour Court-Cum-Industrial Tribunal, Dharamsala in CWP No. 1383 of 2005* in which it was held that :-

“The HP State Electricity Board shall be exempted from all the provisions of standing Orders Act, and thereafter no 10 days notice is required to be given under Standing Orders to the employee. Admittedly, the employees had not completed 240 days and the Tribunal could not have come to the rescue of the employee.”

Thus, the petitioner is not entitled to any service benefits as he has failed to prove that he had worked for 240 days in a preceding year before his termination.

15. Now, adverting to the other aspect of the case, the petitioner has tried to establish on record that the respondent retained his juniors in the service while his services were terminated by an oral order. I find no force in this contention as the petitioner has failed to prove on record as to when his juniors joined the services of respondents department as daily wages beldar and whether they are still continuing in service. On the other hand, the respondent has proved on record that the alleged juniors named by the petitioner are not the juniors to the petitioner and therefore it does not lie in the mouth of petitioner to say that his juniors are retained in service, who are still continuing with the respondent department especially when it is not proved on record that the alleged juniors are still continuing in service with the respondent and as such this contention is rejected being devoid of force.

16. Thus, having regard to entire evidence on record and in view of the fact that the respondent has proved on record that the petitioner remained absent from his duties, who never turned up for his duties as per mandays chart Ex. RA and never completed 240 working days in twelve calendar months preceding his termination and as such the petitioner has miserably failed to prove on record that he had put in 240 working days in twelve calendar months preceding his termination. Obviously therefore, it can safely be concluded that the services of the petitioner have not been illegally terminated by the respondent department. Accordingly, issue no.1 is decided in favour of respondent and against the petitioner.

Issue No. 2:

17. Since I have held under issue no.1 above that the services of the petitioner have not been illegally terminated by the respondent, hence the petitioner is not entitled to any relief. Accordingly, issue no.2 is decided in favour of respondent and against the petitioner.

Issue No. 3:

18. In support of this issue, no evidence was led by the respondents. However I find nothing wrong with this claim which is perfectly maintainable and also observed that there is no limitation under the Industrial Disputes Act, 1947, as it was held by their lordship of *Hon'ble Supreme Court reported in (1999) 6 SCC 82 case titled as Ajayab singh Vs. Sirhind Co-operative Marketing -cum- processing Service Society Limited and Another*. In which it was held that:-

“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Thus, on the strength of this ruling, it can safely be concluded that there is no limitation under the Industrial Disputes Act, 1947. Accordingly, this issue is decided in favour of petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on Issue No. 1 to 3, the claim of the petitioner fails and is hereby dismissed and the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 27th day of May, 2009 in the presence of parties counsels.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Labour court, Shimla

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT SHIMLA.**

Ref No: 63 of 2006.
Instituted On: 10-5-2006.
Decided On: 2-5-2009.

Chandermani C/o Shri Raghubir Singh, Uncha Parwanoo (Guma) Tehsil Kasauli, District Solan, HP.

..Petitioner.

Versus

Smt. Archana Rani W/o Shri Charan Singh, Proprietor M/s Accurex Engg. Works Shed No. 3 HPSIDC
Complex sector-2 Parwanoo, District Solan, HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.

For respondent: Respondent already exparte.

AWARD

1. The following reference has been received for adjudication by this Court from the appropriate government:-

“Whether the action of Prop. M/s Accurex Engg. Works Shed no.3 HPSIDC Complex sector-2 Parwanoo Distt. Solan HP in terminating the services of Shri Chandermani turner w.e.f. 7.6.2004 as alleged by the workman without complying with the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed a claim asserting therein that he was appointed as Turner with the respondent during the month of Jan. 1996 and remained as such till 7.6.2004 when his services were illegally terminated/retrenched without any notice and without compliance of the statutory provisions of Industrial Disputes Act, 1947 and that the services of the petitioner were terminated orally while adopting the method of unfair labour practice as the petitioner has never afforded any opportunity to defend himself in case he has committed any error on his part and that the respondent has retrenched the petitioner without following the statutory and mandatory provisions of section 25-F of the Industrial Disputes Act as no notice nor wages was paid to the petitioner, hence the termination of the petitioner is null, void and inoperative in the eyes of law and that the petitioner proceeded on sanction leave for two days on 26.5.2004 but the petitioner fell ill on the same day and could not come back to resume duty within two days, who remained under treatment in local clinic and the Doctor declared the petitioner fit to resume duties on 6.6.2004 and as such the petitioner submitted the medical certificate on 6.6.2004, who was not allotted with any work and asked to sit idle without work and even his attendance was not marked by the respondent and on 7.6.2004, the respondent has told that his services were terminated and that no charge sheet nor any enquiry was held against the petitioner and as such the case of the petitioner comes under the definition of retrenchment under section 2(oo) of the Act and that the impugned termination has been based on surmises and conjectures being violative of section 25-G and 25-H of the Act as after the termination of the petitioner, juniors were retained by the respondent and as such prayed for reinstatement w.e.f. 7.6.2004 with full back wages, seniority and other consequential benefits.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia contending that the petitioner has left the job at his own after taking his full and final clearance of accounts and his services were never terminated and that the section 25-F of the Industrial disputes Act is not attached since there is no retrenchment and that the petitioner has set up his own industrial unit under the name and style of C.M & Bobby Engg. Works and thus the petitioner is gainfully employed. It is also contended that that notices were sent to the petitioner for joining his duties but he did not report for his duties and as such the petitioner is not interested to work with the respondent.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this court on 9.10.2007 :—

1. Whether the service of the petitioner has been illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947? If so, its effect? ..OPP
2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to? ..OPP
3. Whether the petitioner has abandoned the job and he is gainfully employed? If so, its effect? ..OPR
4. Relief.

6. It is important to mention here that the respondent was proceeded against exparte on 9.1.2008, who filed an application for setting aside an exparte order on 4.10.2008 which was also dismissed in default and then the Ld. AR for petitioner filed an application for restoration of that application which was also dismissed on 2.5.2009 as the respondent has failed to appear before this Court.

7. I have heard the Ld. AR for the petitioner and have gone through the record of the case.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under.

Issue No.1.	Yes.
Issue No.2	Entitled for reinstatement alongwith seniority and continuity but without back wages.
Issue No.3	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1:

9. In order to prove the case, the petitioner has examined himself as PW-1, who has stated that he was appointed as turner with M/s Accurex Engg. Works, Parwanoo in the month of Jan. 1996 and worked as such till 7.6.2004 and then he proceeded on sanctioned leave for two days on 26.5.2004 and suddenly fell ill, who could not come back to resume duties after two days, who got treated himself in local clinic and Doctor declared him fit to resume duties w.e.f. 6.6.2004, who joined duties on 6.6.2004 and submitted his medical certificate but he was not allotted any work and asked to sit idle, who visited the respondent office three four times but he was not permitted to resume the duties without assigning any reason and then he raised the demand notice, who had worked for more than 240 days in each calendar year of his service tenure. No enquiry was conducted against him by the respondent. No

notice nor compensation in lieu of that notice was given to him. No retrenchment compensation was paid to him at the time of his removal, who was also not paid earned wages for the month of May, 2004 and as such prayed for reinstatement in service with full back wages, seniority alongwith other incidental service benefits.

10. I have heard the Ld. AR for the petitioner and have gone through the record of the case.

11. After the close scrutiny of the record of the case and in view of unrebutted exparte evidence on record, I am satisfied that the petitioner was the workman of the respondent company, who was appointed in Jan. 1996 and worked till 7.7.2004, who proceeded on two days sanctioned leave on 26th May, 2004 but he fell ill, who could not resume his duties due to sickness, the petitioner got himself treated from the local clinic and the Doctor declared him fit to resume the duties on 6.6.2004 but the respondent did not allow him to resume his duties. The petitioner approached the respondent management several times. It is also proved on record that no domestic enquiry was conducted by the respondent nor served a notice upon the petitioner by the respondent nor paid any retrenchment compensation and obviously therefore, the case of the petitioner falls under section 25-F of the Industrial Disputes Act, 1947 as the termination of the petitioner by the respondent is illegal, improper and unjustified w.e.f. 7.6.2004 without complying with the provisions of Industrial Disputes Act, 1947. Accordingly, issue no.1 is decided in favour of the petitioner and against the respondent.

Issue No. 2 :

12. Since I have held under issue no.1 above that the services of the petitioner were illegally terminated by the respondent without complying with the mandatory provisions of Industrial Disputes Act, 1947, hence the petitioner is held entitled for reinstatement in service with seniority and continuity. However, the petitioner is not entitled to back wages in view of the peculiar circumstances of the case. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

Issue No. 3 :

13. In support of this issue, no evidence was led by the respondent being the legal issue. It may not be out of place to mention here that the respondent was proceeded against exparte at the time of evidence and no evidence was led by the respondent to prove this issue, hence this issue is decided in favour of the petitioner and against the respondent.

Relief :

As a sequel to my above discussion and findings on issue no.1 to 3 above, the claim of the petitioner succeeds and is hereby allowed exparte, hence the petitioner is ordered to be reinstated in service forthwith with seniority and continuity in service but he is not entitled to back wages in view of the fact that he admitted in his pleadings that he is running a welding shop at Parwanoo and as such is gainfully self employed and as such the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 2nd day of May, 2009 in the presence of petitioner AR.

JAGMOHAN SINGH MAHANTAN

Presiding Judge,

Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING
JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA.

Ref no. 40 of 2003.
Instituted on. 4.2.2003
Decided on. 27.5.2009.

Shyam Lal S/o Shri Bhangi Ram R/o Village
Makhnoo Majara, District Solan, HP.



Petitioner.....

Vs.

The Executive Engineer, HPSEB Division,
Parwanoo, Distt. Solan HP.

Respondent.....

Reference under section 10 of
the Industrial Disputes Act,
1947.

[Signature]
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla

For petitioner : Shri Virender Singh, Ld. Csl.
For respondent : Ms. Shilpa Sood, Ld. Csl.

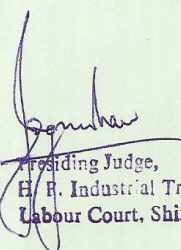
AWARD.

1. The following reference has been
received from appropriate government by this court
for adjudication :

***"Whether the termination of the services of
Shri Shyam Lal s/o Shri Bhangi Ram daily wages
beldar by the Executive Engineer, HPSEB
division, Parwanoo Distt. Solan HP w.e.f.
1.1.2000 without complying with the provisions
of the Industrial Disputes Act, 1947 is proper
and justified? If not, what relief, the
aggrieved workman is entitled to?"***

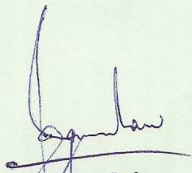
2. The petitioner has filed two
statements of claim asserting therein that the
respondents are only licensee to supply the




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electrical power to various agencies and have employed the workmen around 50-60 thousand and as such the subject matter falls under chapter V-B of the Act and that the respondent is also the State of HP under article 12 of constitution of India and that the petitioner was employed by the HPSEB section Baddi & Barotiwala on June, 1979 as beldar, who continued as such till 31st December, 1999 without any break in service and had completed more than 240 working days continuous service, who was terminated on 1.1.2000 and that the workman being employed by the respondent is a workman under section 2(s) of the Act and that the petitioner enjoyed the continuity in service with more than 240 days in each year till his illegal termination and that the workman has become unemployed since the date of illegal termination from service and as such his retrenchment falls under section 2-oo of the Act as no enquiry was brought on record which is null, void and inoperative due to failure of the employers to follow the provisions of section 25-F of the Act and the action of the respondent is also violative of certified standing orders. Another claim has been filed by the petitioner on 28.10.2005 in




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which the petitioner has averred that he was engaged as beldar with the respondent no.3 in the electrical section Baddi in the year 1981, who continued as such till 1.1.2000 and the respondent orally terminated the services of the claimant without any notice as required under the law and the petitioner completed 240 days in the last preceding twelve months and that the petitioner approached the respondent for his reengagement but in vain and that the termination of the petitioner is in violation of sections 25-F, 25-N, 25-G & 25-H of the Industrial disputes Act, 1947 and that no opportunity was afforded to the petitioner before his termination and as such prayed for reengagement with all consequential benefits from the date of illegal termination, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections that the petitioner has no enforceable cause of action against the respondent and that no legal or vested right of the petitioner has been infringed or violated by the respondent, barred by delay and laches and not maintainable. On merits,



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it is contended that the petitioner himself abstained the job wilfully without intimation to his superiors under whom he had worked at that time and if the petitioner approached the respondent, he would be adjusted ⁱⁿ some other area where the work was available at that time, who was engaged as beldar on daily wages on 26.7.1981 and worked as such upto 20.6.1999 and left the job of his own, who had completed 240 days during 1982, 1983 and 1984 as per annexure RA-1 and since the petitioner left the job of his own, hence the notice as per Industrial Disputes Act, 1947 was not required to be served upon him, who was never terminated from service and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this court on 20.11.2006 on the pleading of the parties.

1. Whether the service of the petitioner has been illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947? If so, its effect?

OPP...

...

2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to?

OPP...

...

3. Whether the petition is not maintainable and the claim is barred by limitation?

OPR...

...

4. Relief.

6. I have heard the Ld. CsIs. for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1 No.

Issue no.2 Not entitled to any relief.

Issue no.3 No.

Relief. Reference answered in negative per operative part of award.

Reasons for findings.

Issue no.1.

8. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged as beldar on daily wages basis in the year 1981 and worked as such till 2000, who was sent for work to Baddi, Barotiwala and



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Parwanoo and when he was sent to different working places, his attendance was not marked on the pretext that attendance would be marked by the respective Sub Divisions whose services were terminated on 1.1.2000, who visited the office of respondent several times for his reengagement but in vain. No notice nor compensation was paid to him at the time of his termination. His juniors S/Shri Rajkumar, Ram Lal and others were engaged by the respondent who are still working with the respondent.

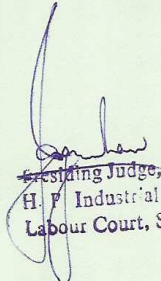


Presiding Judge,
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To rebut the case of the petitioner, the respondent examined Er. J.S Rana as RW1, who has stated that the petitioner was engaged as a beldar on daily wages w.e.f. 26.7.1981 and continued as such till 20.6.1999 and the petitioner has not completed 240 working days in any calendar year preceding his termination, who worked for more than 240 days in the years 1982, 83 and 84, who did not work for a single day from 1996 to 1998 and worked for 39 days in 1999 and proved the copy of mandays chart Ex. RA. The petitioner abandoned the job of his own after 20.6.1999, who never approached the respondent for his reengagement and no junior to the petitioner was engaged by the respondent at any point of time.

10. The case of the petitioner is that he being the daily wages beldar having worked for more than 240 days in each calendar year preceding his termination, who was illegally terminated by the respondent without following the mandatory provisions of Industrial Disputes Act, 1947 and even after his termination, junior persons are retained by the respondent and as such he is also entitled for his reinstatement in service with all consequential benefits alongwith back wages.




Assistant Judge,
H. P. Industrial Tribunal-cum-
Labour Court, Shimla.

11. On the contrary, the respondents contend that the petitioner was never terminated from service, who abandoned the job of his own without any intimation to his superior and no junior to the petitioner was retained by the respondent, hence the petitioner is not entitled to any relief as prayed by him.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner was working under the respondent as daily wages beldar and according to the petitioner, he was terminated by the respondent from service without any notice and without compensation on the completion of 240 working days in a calendar year



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Presiding Judge,
H.P. Industrial Tribunal,
Labour Court, Shimla

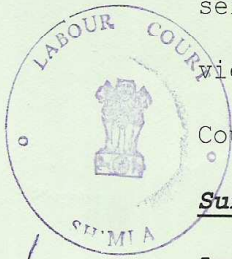
preceding termination but there is nothing on record which could show that the petitioner has completed 240 working days in twelve calendar months preceding his termination. Apart from oral evidence, the petitioner has not produced any evidence on record to prove the fact that he had worked for more than 240 days in a twelve calendar months preceding his termination. The mandays chart relied upon by respondent has revealed that the petitioner has completed 240 working days in the year 1982, 83 and 84 and thereafter the petitioner did not turn up for duties, who worked with the respondent casually. No doubt that the petitioner has tried to take the benefits that he had put in 240 working days in the year 1982, 83 and 84 but there is nothing on record which could go to show that the petitioner has completed 240 working days in twelve calendar months preceding his termination and as such there is no violation of section 25-F of the Industrial Disputes Act, 1947 as the petitioner has failed to prove on record that he has worked for 240 working days in twelve calendar months preceding his termination. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; mandays chart produced by the respondent employer has not been contradicted

and as such the petitioner has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service and as such the petitioner is not entitled for protection of Section 25-F before his service was terminated. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai

Amarsingh in which it was held that:-

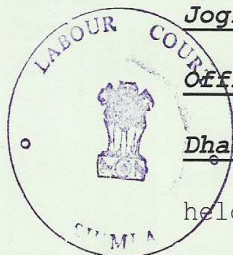
"In case workman claims to have worked for more than 10 years as daily wager-Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted-Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."

14. It is also the case of the petitioner that the respondent has violated the provisions of Rule 14 (ii) of Standing Orders of HPSEB as no notice was given to him before his termination. Here, I am fortified with a view taken by our own High Court that no notice was



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Presiding Judge,
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required to be given to the petitioner by HPSEB even if the employment is below one year from the date of termination, as it was held in Executive Engineer Joginder Nagar & Sanju S/O Sh. Gantu Ram, Vill Dalana, P.O. Ballhjoli, Tehsil. Jogindernagar, Distt. Mandi H.P. & Presiding Officer, Labour Court-Cum-Industrial Tribunal, Dharamsala in CWP No. 1383 of 2005 in which it was held that :-



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"The HP State Electricity Board shall be exempted from all the provisions of standing Orders Act, and thereafter no 10 days notice is required to be given under Standing Orders to the employee. Admittedly, the employees had not completed 240 days and the Tribunal could not have come to the rescue of the employee."

And as such, the petitioner is not entitled to any service benefits as he has failed to prove that he had worked for 240 days in a preceding year before his termination.

15. Now, adverting to the other aspect of the case, the petitioner has tried to establish on record that the respondent retained his juniors in the service while his services were terminated by an oral order. I find no force in this contention as the petitioner has failed to prove on record as to when his juniors joined the services of respondents department as daily wages

^{whether}
beldar and they are still continuing in service.

On the other hand, the respondents have proved on record that the alleged juniors named by the petitioner are not the juniors to the petitioner and therefore it does not lie in the mouth of



petitioner to say that his juniors are retained in service who are still continuing with the respondent department especially when they have

not proved on record that the juniors are continuing in service with the respondents and as such this contention is not proved on record,

[Signature]
~~Presiding Judge,~~
H. F. Industrial Tribunal-cum-
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hence not accepted.

16. Thus, having regard to entire evidence on record and in view of the fact that the respondent has proved on record that the petitioner remained absent from his duties, who never turned up to his duties as per mandays chart Ex. RA and never completed 240 working days in twelve calendar months, ^{hence the} petitioner has miserably failed to prove on record that he had put in 240 working days in twelve calendar months preceding his termination. Obviously therefore, it can safely be concluded that the services of the petitioner have not been illegally terminated by the respondent department. Accordingly issue no.1 is decided in favour of respondent and against the petitioner.

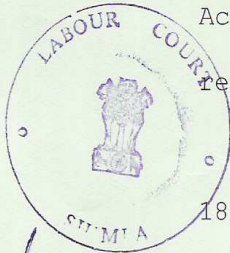
Issue no.2

17. Since I have held under issue no.1 above that the services of the petitioner have not been illegally terminated by the respondent, hence the petitioner is not entitled to any relief. Accordingly, issue no.2 is decided in favour of respondent and against the petitioner.

Issue No.3

18. In support of this issue, no evidence was led by the respondents. However I find nothing wrong with this claim which is perfectly maintainable and also observed that there is no limitation under the Industrial Disputes Act, 1947, as it was held by their lordship of Hon'ble Supreme Court reported in (1999) 6 SCC 82 case titled as Ajayab singh Vs. Sirhind Co-operative Marketing -cum- processing Service Society Limited and Another. In which it was held that:-

"the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay, if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"



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Accordingly, on the strength of this ruling, it can safely be concluded that there is no limitation under the Industrial Disputes Act, 1947. Accordingly, this issue is decided in favour of petitioner and against the respondents.

Relief.

As a sequel to my above discussion and findings on Issue No. 1 to 3, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 27th day of May, 2009 in the presence of parties counsels.

(Parveen)



(Jagmohan Singh Mahantani)
Presiding Judge,
Labour Court, Shimla

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.

Ref No. 55 of 2006.
Instituted on 7-4-2006.
Decided on. 25-5-2009.

Bharat Bhushan S/o Shri Devi Ram R/o Village Tando, P.O Hallan, Tehsil Shillai, District Sirmour, HP.
..Petitioner.

Vs.

1. The Regional Potato Development Officer (RPDO) Department of Horticulture Shillaru, district Shimla, HP.
2. The Agriculture Development Officer (ADO) Potato Development Centre, Department of Agriculture, Kharapather, P.O Deem Tehsil Jubbal, District Shimla, HP. ..Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, Ld. AR.
For respondent : Shri Jagdish Kanwar, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:-

“Whether the termination of services of Shri Bharat Bhushan S/o Shri Devi Ram workman by the (1) the Regional Potato Development Officer (RPDO) Department of Horticulture Shillaru, District Shimla, HP (2) the Agriculture Development Officer (ADO) Potato Development Centre, Department of Agriculture, Kharapather, P.O Deem Tehsil Jubbal, District Shimla, HP w.e.f. 16.8.2000 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed a claim asserting therein that he started his career with the department during the month of April, 1999 as daily wages beldar, who remained as such till 16.8.2000 when his services were illegally terminated without any justification or cogent reasons in spite of the fact that his services were continuous for the purpose of section 25-B of the Act as the petitioner remained in the employment for more than 240 days preceding to his termination within 12 calendar months and that the services of the petitioner were terminated on 16.8.2000 without serving any notice and without the payment of compensation which is against the provisions of section 25-F of the Act and even no prior intimation was given to the appropriate government as required under the prescribed manner and that the service of the petitioner was terminated orally while adopting the method of unfair labour practice, who was never afforded an opportunity to defend himself and that the termination has been based on surmises and conjecture being violative of section 25-G and 25-H of the Act as after his termination, the juniors were retained and new hands were recruited and deployed in his place and that the respondent department could not automatically retrench the workman and there must be cogent reason for retrenchment at first hand and then the respondent has to comply with mandatory and statutory provisions of Industrial disputes Act and that the oral order of the respondent to remove the petitioner from service is bad in law and further against the set legal norms as the respondent could not pass a speaking order after affording opportunities to the petitioner and that the petitioner is unemployed from the date of his illegal removal from service and as such prayed for reinstatement in service with full back wages, seniority and other consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections that the petitioner was engaged as casual labourer on muster roll w.e.f. April, 1999 till 16.9.2000 by the Incharge Potato Development Station, Khara Pathar, who worked in different schemes for different works for 247 days and the engagement of the petitioner was always co-terminus with the completion of the work and that the agriculture department deals with Govt. activities and does not fall in the ambit of Industry. On merits, it is contended that the petitioner abandoned the work at his own during August, 2000, who never came back for duties as the petitioner was not appointed against the post nor the works of the farm are of permanent nature and that the question of deviation from the principle of last come first go arises if the respondent terminated the services of the petitioner but the petitioner himself left the job of his own and as such prayed for dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 5.10.2007 on the pleadings of the parties:

1. Whether the service of the petitioner has been illegally terminated by the respondent without complying with the provisions of Industrial disputes Act, 1947? If so, its effect? ..OPP
2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to? ..OPP
3. Whether the petition is not maintainable as the respondent department is not an Industry? ..OPR
4. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1.	Yes.
Issue No. 2.	Entitled for reinstatement in service with seniority and continuity but without back wages.
Issue No. 3.	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1:

8. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged in April, 1999 as beldar at Khara Pathar in agriculture department and worked till 16th August, 2000, who had worked for more than 240 days in each year, who was removed from service by ADO. No notice nor compensation was paid to him at the time of his removal and the work is still going on in the farm of the respondent department and after his removal, the Gorkha labour might have engaged.

9. To rebut the case of the petitioner, the respondent has examined RW-1 Shri Nand Kishore Mahajan, who has stated that he is working as Distt. Agriculture Officer, Shimla since 2005. The petitioner had worked as casual labour with the department for specific work and for specific time at Kharapathar in agriculture farm, who left the job as no work was available with them. The petitioner was engaged in December, 1999, who worked till August, 2000. They engage casual labour for seasonal work and maintain the register and enter the name of casual labour in that register and they provide job to the casual labour as per seniority subject to the availability of work and the petitioner was never retrenched, who abandoned the job himself.

10. The case of the petitioner is that he being the daily wages beldar having worked for more than 240 days in each calendar year preceding his termination and his termination without notice and compensation is illegal and even juniors to him are still working with the respondent department and as such he is also entitled for reinstatement in service with all consequential benefits.

11. On the contrary, the respondent contends that the petitioner was not terminated from service, who left the job of his own without any intimation to the department. Moreover, the petitioner was engaged for seasonal work for specific period and after the completion of the work, the services of the petitioner automatically came to an end, hence the petitioner is not entitled to any relief.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it stands proved on record from mandays chart Annexure R-1 that the petitioner had worked for more than 240 days in a twelve calendar months from the date of his termination as RW-1 has admitted in his cross examination that no work was provided to the petitioner for two months. It is significant to note that the RW-1 has admitted that the petitioner had worked for 247 days in the year 1999 but keeping in view the mandays chart attached with the reply, it is clear that the petitioner has worked for more than 240 working days in a twelve calendar months preceding his termination. Apart from it, there is nothing on record which

could show that the petitioner was engaged as a casual labourer for specific period and for specific work. In view of no such evidence on record, it can safely be concluded that the case of the petitioner falls under section 25-F of the Industrial Disputes Act, 1947. No doubt, the respondent has tried to establish on record that the petitioner has abandoned the job of his own but there is nothing on record which could show that the petitioner himself is responsible for loosing his job. I find no force in this contention as it was held in case titled as **State of HP & Others Vs. Bhatag Ram & Another as reported in latest HLJ 2007 (HP) 903** in which it was held that:-

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

13. Now adverting to the other aspect of the case, it stands proved on record that the petitioner has worked for 240 days continuous service in twelve calendar months from the date of his termination which fact has also admitted by the respondent in his evidence as RW-1 that the petitioner had worked for 247 days in the year 1999.

Section 25-F of the ‘Act’ provides that:

25-F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) **the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;**
- (b) **the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days’ average pay (for every completed year of continuous service) or any part thereof in excess of six months; and**
- (c) **notice in the prescribed manner is served on the appropriate government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)**

14. After the close scrutiny of section 25-F, it is clear that termination of services of the petitioner, who has worked for more than 240 days in a calendar twelve months preceding his termination as is admitted by RW-1 Shri Nand Kishore and his termination without notice under section 25-F and payment of compensation is illegal and as such, the termination amounts to illegal retrenchment contravening the provisions of section 25-F of the I.D Act, 1947. Accordingly, issue no.1 is decided in favour of the petitioner and against the respondent.

Issue No. 2 :

15. Since I have held under issue no.1 above that the services of the petitioner have been illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947, hence the petitioner is held entitled to reinstatement in service alongwith seniority and continuity. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided against the respondent and in favour of the petitioner.

Issue No. 3.

16. In support of this issue, no evidence was led by the respondent being the legal issue. However, I have scrutinized the record of the case and observed that the respondent department falls under the Industrial disputes act, 1947 as it was held by the **Full Bench of Hon’ble Supreme Court reported in 1978 (2) SCC 213** in which it was held that the educational institute and research centers are Industry. It was further held by the Hon’ble Supreme Court in case titled **Bangalore Water Supply and Sewerage Board Vs. A. Rajappa as reported in 1978 Vol-1 LLJ-349** in which it was held that a University is an Industry particularly with respect to small workers like mali, Chowkidars, Carpenters etc and as such on the strength of above cited judgments, it can safely be concluded that the respondent department is an Industry and governed by the Industrial Disputes Act, 1947. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not

gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 25th Day of May 2009 in the presence of parties counsels.

J. S. MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

Ref No. 44 of 2003.
Instituted on. 4-2-2003
Decided on. 27-5-2009.

Gurbachan Singh S/o Shri Dalip Singh R/o Village Makhnoo Majra P.O Bhood, Tehsil Nalagarh, District Solan, HP. ..Petitioner.

Vs.

The Executive Engineer, HPSEB Division, Parwanoo, Distt. Solan HP. ..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner :Shri Virender Singh, Ld. Csl.

For respondent : Ms. Shilpa Sood, Ld. Csl.

AWARD.

1. The following reference has been received from appropriate government by this court for adjudication :

“Whether the termination of the services of Shri Gurbachan Singh s/o Shri Dalip Singh daily wages beldar by the Executive Engineer, HPSEB division, Parwanoo Distt. Solan HP w.e.f. 1.1.2000 without complying with the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief, the aggrieved workman is entitled to?”

2. The petitioner has filed statement of claim asserting therein that he was engaged as beldar by the respondent on 31.3.1980, who continued as such till 1.1.2000 with utmost sincerity and devotion and no complaint was there against the petitioner, who was terminated orally after completion of 240 days in the last preceding twelve months and that the petitioner approached the respondent to reengagement but all in vain and that after his termination, he was never called upon to resume his duties by the respondent and that the termination of the petitioner is in violation of sections 25-F, G, N & H of the Industrial disputes Act, 1947 and also in violation of standing orders formulated by the HPSEB and that no opportunity of being heard was afforded to the petitioner before terminating his services and even juniors to him are still working with the respondent and as such prayed for reinstatement with all consequential benefits from the date of his illegal termination, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections that the petitioner has no enforceable cause of action against the respondent and that no legal or vested right of the petitioner has been infringed or violated by the respondent, barred by delay and laches and not maintainable. On merits, it is contended that the petitioner was engaged as beldar on 26.5.1982 and worked upto 25.12.1985, who was again engaged on duty after a lapse of two years on 26.11.1987 and worked upto 25.5.1989 with breaks, who was again engaged on 21.4.1999 and worked upto 20.6.1999 with breaks and did not turn up for duty after 20.6.1999, who himself abstained the job wilfully without intimation, who had completed 240 days in the year 1985 and since the petitioner left the job of his own, hence the notice as per Industrial Disputes Act, 1947 was not required to be served upon him nor any compensation was payable to him, who was never terminated from service and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this court on 20.11.2006 on the pleadings of the parties.

1. Whether the service of the petitioner has been illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947? If so, its effect? ..OPP
2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to? ..OPP
3. Whether the petition is not maintainable and the claim is barred by limitation? ..OPR
4. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	No.
Issue No. 2	Not entitled to any relief.
Issue No. 3	No.
Relief.	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS

Issue No.1:

8. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged as beldar in the year 1980 and worked as such till 2000, who was sent for work to Baddi, Barotiwala and Parwanoo and when he was sent to different working places his attendance was not marked on the pretext that attendance would be marked by the respective Sub Divisions and in the year 1985, his attendance was not marked and a register was issued to us for marking his attendance and the register was signed and issued by the Assistant Engineer, HPSEB Sub Division, Baddi upto 25th March, 1986 and then the respondent issued casual cards to him which was not accepted by the department but made payment to him and on 17.4.1999 a letter was issued by the Secretary HPSEB requesting Executive Engineer HPSEB Parwanoo to consider his case for reengagement, copy of which is mark X and another letter Ex. PA was issued by Assistant Executive Engineer to him, who was reengaged by the respondent on 22.4.1999 and terminated his services on 1.1.2000, who requested the respondent several times for reengagement but in vain. No notice nor compensation was paid to him at the time of his termination. His juniors S/Shri Rajkumar, Ram Lal and others were engaged by the respondent who are still working with the respondent.

9. To rebut the case of the petitioner, the respondent examined Er. J.S Rana as RW1, who has stated that the petitioner was engaged as a beldar on daily wages w.e.f. 26.5.1982 and continued as such till 20.6.1999 with breaks and the petitioner has not completed 240 working days in any calendar year preceding his termination, who did not work from 1990 to 1998 and worked for 59 days in 1999 and proved the copy of mandays chart Ex. RA, who never approached the respondent for his reengagement and no junior to the petitioner was engaged by the respondent at any point of time.

10. The case of the petitioner is that he being the daily wages beldar having worked for more than 240 days in each calendar year preceding his termination, who was illegally terminated by the respondent without following the mandatory provisions of Industrial Disputes Act, 1947 and even after his termination, his juniors are retained by the respondent and as such he is also entitled for his reinstatement in service with all consequential benefits alongwith back wages.

11. On the contrary, the respondents contend that the petitioner was never terminated from service, who abandoned the job of his own without any intimation to his superior and no junior to the petitioner was retained by the respondent, hence the petitioner is not entitled to any relief as prayed by him.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner was working under the respondent as daily wages beldar and according to the petitioner he was terminated by the respondent from service without any notice and without compensation on the completion of 240 working days in a calendar year preceding his termination but there is nothing on record which could show that the petitioner has completed 240 working days in

twelve calendar months preceding his termination. Apart from oral evidence, the petitioner has not produced any evidence on record to prove the fact that he has worked for more than 240 days in a calendar year preceding his termination. The mandays chart relied upon by the respondents has revealed that the petitioner has not completed 240 working days in any twelve calendar months preceding his termination. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; mandays chart produced by the respondent employer has not been contradicted and as such the petitioner has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service and as such the petitioner is not entitled for protection of Section 25-F before his service was terminated. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in *AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amarsingh* in which it was held that:-

“In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”

13. Moreover, it is also the case of the petitioner that the respondent has violated the provisions of Rule 14 (ii) of Standing Orders of HPSEB as no notice was given to him before his termination. It is significant to note that the HPSEB has been exempted from all the provisions of standing orders Act and therefore no prior ten days notice is required to be given to the workman. Here, I am fortified with a view taken by our own High Court that no notice was required to be given to the petitioner by HPSEB even if the employment is below one year, as it was held in *Executive Engineer Joginder Nagar & Sanju S/O Sh. Gantu Ram, Vill Dalana, P.O. Ballhjoli, Tehsil. Jogindernagar, Distt. Mandi H.P. & Presiding Officer, Labour Court-Cum-Industrial Tribunal, Dharamsala in CWP No. 1383 of 2005* in which it was held that :-

“The HP State Electricity Board shall be exempted from all the provisions of standing Orders Act, and thereafter no 10 days notice is required to be given under Standing Orders to the employee. Admittedly, the employees had not completed 240 days and the Tribunal could not have come to the rescue of the employee.”

Thus, the petitioner is not entitled to any relief, who has failed to prove that he had worked for 240 days in twelve calendar months preceding his termination.

14. Now, advertent to the other aspect of the case, the petitioner has tried to establish on record that the respondents retained his juniors in the service while his services were terminated by an oral order. I find no force in this contention as the petitioner has failed to prove on record as to when his juniors joined the services of respondents department as daily wages beldar and whether they are still continuing in service. On the other hand, the respondents have proved on record that the alleged juniors named by the petitioner are not the juniors to the petitioner and therefore it does not lie in the mouth of petitioner to say that his juniors are retained in service and are still continuing with the respondent department especially when they are not proved on record to be continuing in service with the respondents and as such this contention is rejected being bereft of substance.

15. Thus, having regard to entire evidence on record and in view of the fact that the respondent has proved on record that the petitioner remained absent from his duties, who never turned up for his duties as per mandays chart Ex. RA, who never completed 240 working days in a twelve calendar months preceding his termination and as such the petitioner has miserably failed to prove on record that he had put in 240 working days in twelve calendar months preceding his termination. Obviously, therefore, it can safely be concluded that the services of the petitioner have not been illegally terminated by the respondent department. Accordingly, issue no.1 is decided in favour of respondent and against the petitioner.

Issue No. 2 :

16. Since I have held under issue no.1 above that the services of the petitioner have not been illegally terminated by the respondent, hence the petitioner is not entitled to any relief. Accordingly, issue no.2 is decided in favour of respondent and against the petitioner.

Issue No. 3:

17. In support of this issue, no evidence was led by the respondents. However I find nothing wrong with this claim which is perfectly maintainable and also observed that there is no limitation under the Industrial Disputes Act,

1947, as it was held by their lordship of *Hon'ble Supreme Court reported in (1999) 6 SCC 82 case titled as Ajayab Singh Vs. Sirhind Co-operative Marketing -cum- processing Service Society Limited and Another*. In which it was held that:-

“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Thus, on the strength of this ruling, it can safely be concluded that there is no limitation under the Industrial Disputes Act, 1947. Accordingly, this issue is decided in favour of petitioner and against the respondents.

Relief:

As a sequel to my above discussion and findings on Issue No. 1 to 3, the claim of the petitioner fails and is hereby dismissed and the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 27th day of May, 2009 in the presence of parties counsels.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Labour court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, HP.

Ref No. 52 of 2006.
Instituted on 7-4-2006.
Decided on. 26-5-2009.

Tulsi Ram S/o Shri Prem Dass R/o Village Upper Ladrou, P.O Ladrou, Tehsil Bhoranj, District Hamirpur,
HP. ..Petitioner.

Vs.

1. The Managing Director, HRTC, Shimla 171003.
2. The Divisional Manager HRTC Shimla 171004.
3. The Regional Manager, HRTC, Rohroo, District Shimla, HP. ..Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Shashi Shirshoo, Ld. Csl.
For respondent : Shri Rajesh Verma, Ld Csl.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:-

“Whether the action of (1) the Regional Manager, Himachal Transport Corporation, Rohru, Distt. Shimla HP (2) the Divisional Manager HRTC Divisional office Shimla-4 (3) the Managing Director, HRTC, Head Office Shimla-4 to terminate the services of Shri Tulsi Ram S/o Shri Prem Dass ex driver after completion of contract period w.e.f. 5.12.1997 with paying retrenchment notice and one month salary is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed a claim asserting therein that he was selected as driver in HRTC after meeting all the codal formalities during the year 1996, who was appointed and posted as driver in HRTC Rohroo vide letter dated 1.11.1996, who joined as Driver on 3.12.1996 and that the work of the petitioner has been to the utmost satisfaction of his superior and during the tenure of his service with the corporation as driver, the petitioner has a satisfactory service

record and there is nothing to declare him unfit for job and that to the bad luck of the petitioner, who was on duty with bus service Sumerkot-Chandigarh on 4.11.1997 and reached at Shimla at 12 midnight and the petitioner had to take the bus to Sumerkot on next date i.e 5.11.1997 and on 5.11.1997, the petitioner started to take the bus to Lakkar bazar Bus Stand but on the way another bus driver hit his bus which was being driven by the petitioner, who came out from the bus and asked another bus driver that why he was in so hurry by driving the bus rashly and negligently. Other transport officials/staff members were also sitting in that bus and they shouted at the petitioner and lodged a false complaint against the petitioner and due to this reason, the services of the petitioner were terminated without conducting any enquiry and that the services of the petitioner were terminated by the R.M, HRTC, Rohroo vide order dated 5.12.1997 and a bank Draft of Rs. 3240/- in lieu of one month notice was also sent to the petitioner and that the petitioner was appointed as driver alongwith others on contract basis and the petitioner was never terminated from his service after completion of stipulated period of one year service and that the petitioner preferred an appeal before the Divisional Manager, HRTC Shimla but nothing was done and as such prayed for reinstatement in service w.e.f. 5.12.1997 with all consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability, services of the petitioner have been terminated as per the conditions of the contract and delay and latches. On merits, it is contended that the work and conduct of the petitioner was not found satisfactory by the superiors, who was found under influence of alcohol during duty hours and was warned for not repeating the same in future but all in vain. It is also contended that on 5.11.1997 while on return journey from Chandigarh, the petitioner hit the bus of Tara Devi unit at Petrol Pump barrier and FIR was registered against the petitioner at police station Bioluganj, who was medically examined at DDU Hospital Shimla. It is denied that the services of the petitioner were terminated on account of the said misconduct in fact his services were terminated vide order dated 5.12.1997 in pursuance of the condition contained in sub para (iii) & (iv) of the contract dated 30.11.1996 and the work and conduct of the petitioner was not found satisfactory, hence his services were not regularized and were terminated and the question of holding enquiry did not arise as the CCS & CCA Rules are not applicable in the present case and as such prayed for dismissal of the claim.

4. No rejoinder filed. The following issues were framed by this Court on 4.6.2007 on the pleadings of the parties:

1. Whether the service of the petitioner has been illegally terminated without complying with the provisions of Industrial disputes Act, 1947? If so, its effect? ..OPP
2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to? ..OPP
3. Whether the petition is not maintainable and it is also barred by limitation? ..OPR
4. Relief.

5. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1.	No.
Issue No. 2.	Not entitled to any relief.
Issue No. 3.	No.
Relief.	Reference answered in Negative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1:

7. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged as driver in Rohru w.e.f. 29.10.1996 as per appointment letter Ex. PA, who remained at Rohru upto 4.12.1997 and his work was very good during his stay and no complaint was lodged against him during his stay at Rohru. On 5.11.1997, he had a quarrel with HRTC Driver of Tara Devi as the Driver abused him and there was no accident of his vehicle but a false case has been registered against him by the Driver of Tara Devi Depot, who blocked the main road and because of this he was removed from service w.e.f. 5.12.1997 and the persons engaged with him are still working with the respondent and they have been regularized and after his removal, he submitted an application Ex. PB to the M.D and Divisional Manager. No notice nor compensation was paid to him and as such prayed for reinstatement with all consequential benefits.

8. To rebut the case of the petitioner, the respondent has examined RW-1 Shri Deshraj Sharma, who has stated that the petitioner was appointed as driver on contract basis for a year vide contract Ex. RA in the year 1997 but during the contract period, the petitioner met with an accident under the influence of liquor on 5.11.1997 and as such he was removed from service under para 3 & 4 of the contract.

9. Shri Shashi Shirshoo, Id. Csl. for the petitioner has vehemently argued at the very outset that since the work and conduct of the petitioner remained satisfactory but his services were terminated without serving a notice and without compensation under section 25-F of the Industrial Disputes Act, 1947. He has also urged that the petitioner has completed 240 working days in a calendar year preceding his termination and as such the petitioner is liable to be reengaged with all consequential benefits including back wages.

10. On the contrary Shri Rajesh Verma, Id. Csl. for respondent controverted the arguments of Shri Shirshoo and has submitted that the petitioner was engaged as driver on contract basis for a period of one year, who was terminated after granting him termination compensation in lieu of one month's notice.

11. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged as driver with HRTC Rohru on contract basis for a period of one year commencing from 3.12.1996 to 4.12.1997 which fact has not been disputed by the petitioner as is evident from deposition of the petitioner as PW-1. Since the petitioner was engaged as driver on contract basis as is evident from Ex. PA and the petitioner accepted his appointment letter in which he was engaged as driver on contract basis along with two others and obviously, therefore the petitioner cannot claim the right over the post especially when there is clear stipulation in the appointment letter Ex. PA that his appointment was initially for one year on contract basis and then he will be considered for regular appointment by competent authority on merits and his one year performance basis. It is significant to note that the petitioner has tried to establish on record that there was accident but not with his vehicle and a false case has been registered against him by the driver of Tara Devi Depot and the driver of Tara Devi Depot blocked the main road as a result of which he was removed from service on 5.12.1997 and the other drivers engaged with him are still working with the respondent and he submitted an application Ex. PB to the Managing Director and Divisional Manager but to no avail. However, it is well settled in *AIR (2007)SC 533 incase titled as Gangadhar Pillai V. Siemens Ltd.* in which it was held that :

"Once the period of contract is fixed and the same is done keeping in view the nature of job, it cannot be said that the act of the employer in terminating services is actuated by any malice".

13. It has also brought on record that the petitioner was involved in a criminal case. According to him, a case was registered against him but the petitioner did not bring any material on record which could show that he was acquitted from that charge. On the other hand, the respondent has clearly stated in the reply that on 5.11.1997 while on return journey from Chandigarh, the petitioner hit the bus of Tara Devi Depot of respondent corporation and a FIR was registered in the Police station Boiluganj against the petitioner and the petitioner was medically examined at DDU hospital, Shimla and the work and conduct of the petitioner was not found satisfactory during the contract period and thus keeping in view the entire facts and circumstances of the case and in view of the fact that the services of the petitioner were retrenched soon after the expiry of specified period and as such no retrenchment was done under section 2(oo) of the Industrial Disputes Act, 1947, hence the compliance of section 25-F of the Act is not necessary in this case. Accordingly, issue no.1 is decided in favour of the respondent and against the petitioner.

Issue No. 2:

14. Since I have held under issue no.1 above that the services of the petitioner were terminated in accordance with law, hence the petitioner is not entitled to any relief. Accordingly, issue no.2 is decided against the respondent and in favour of the petitioner.

Issue No. 3:

15. In support of this issue, no evidence was led by the respondent being the legal issue. However I find nothing wrong with this claim of the petitioner which is perfectly maintainable in the present form and there is no limitation under the I.D Act as it was held by their lordship of *Hon'ble Supreme Court as reported in (1999) 6 SCC 82 incase titled as Ajayab Singh Vs. Sirhind Co-operative Marketing -cum- processing Service Society Limited and Another.* in which it was held that:-

"the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised

by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Thus, on the strength of this ruling, it can safely be concluded that this petition is not barred by limitation and is perfectly maintainable in the present form. Accordingly, issue no.3 is decided against the respondent and in favour of the petitioner.

RELIEF

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner fails and is hereby dismissed as a result of which the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 26th Day of May 2009 in the presence of parties counsels.

J.S MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.

Ref No. 147 of 2006.
Instituted on 18-11-2006.
Decided on. 26-5-2009.

Rameshwar Dass S/o Shri Gian Chand R/o Village Jatti Majara, P.O Lodhi Majra, Tehsil Nalagarh, Distt. Solan, HP. ..Petitioner.

Vs.

The Management M/s Ghee Claridge Moulded Fibers Ltd, Malku Majra, Tehsil Nalagarh, Distt. Solan, HP. ..Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Vishal Bindra, Ld. Csl.
For respondent : Shri S.L Kashyap, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:-

“Whether the action of the Management M/s Ghee Claridge Moulded Fibers Ltd, Malku Majra, Tehsil Nalagarh, Distt. Solan, HP to demote Shri Rameshwar Dass S/o Shri Gian Chand from the post of Shift Incharge to Machine Operator w.e.f. 23.12.2004 as alleged by the workman is proper and justified? If not, what relief of service benefits the above aggrieved workman is entitled to?”

2. The petitioner has filed a claim asserting therein that the applicant has been working with the respondent company since 1987, who was engaged as helper and that the applicant was working as a helper in the respondent company with full efficiency, good skills, sincerity and honestly, who was promoted to the post of mould machine operator Grade-A in the company w.e.f. 1996 and worked as such till 25.6.2004, who was again promoted to the post of shift Incharge w.e.f. 26.6.2004 and the applicant was doing his job at the post of shift Incharge according to the norms and the conditions of the job prescribed by the management of the company and that on 23.12.2004, the applicant was demoted to the post of machine operator from the post of shift Incharge through a written note dated 22.12.2004 and the applicant was shocked to receive the written note of demotion as he could not find out the reason of his fault, who made representation to the management through letter dated 24.12.2004 and that the management never considered the matter and never gave an opportunity to the applicant to represent his side regarding his demotion and that the management has changed the working conditions of applicant without any reason which is violative of provisions of Industrial Disputes Act, 1947 and as such prayed for reinstatement as supervisor/shift Incharge w.e.f. December, 2004 with all benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objection of maintainability. On merits, it is contended that the applicant as mould machine operator Grade-1, slowly and steadily started involving himself in the politics and indulgence in the trade union affairs being the office bearer of the trade union and other activities contrary to the norms and conditions of his service as mould machine operator grade-1 whose working became negligent and abnormal and show cause notices were issued to him on 29.5.1999 and 14.8.2005, who had joined the respondent company as unskilled worker, who was promoted as machine operator on 11.10.1995 which was confirmed vide letter dated 9.5.1996, who was never promoted as shift Incharge nor the petitioner worked as supervisor and the respondent never issued any promotion letter nor ever promoted the applicant to the post of shift Incharge/supervisor, hence the allegations of demotion of applicant to the post of mould machine operator Grade-1 are wrong, false, baseless which is speculative, imaginary and concocted one and that the respondent never changed the working conditions of the applicant and the entire allegations putforth by the applicant in this regard are wrong, false and baseless and as such prayed for dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 4.1.2008 on the pleadings of the parties:

1. Whether the demotion of the petitioner by the respondent company w.e.f 23.12.2004 is proper and justified? ..OPP
2. If issue no.1 is proved in affirmative, to what relief the petitioners are entitled to? ..OPP
3. Whether the reference in the present form is not maintainable? ..OPR
4. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No 1.	No.
Issue No. 2.	Not entitled to any relief.
Issue No. 3.	No.
Relief.	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1:

8. Coming to this issue, the petitioner has examined three PWs in all. PW-1, Shri Rameshwar Dass has stated that he was working as helper with the respondent company in the year in the year 1987 and then he was made permanent in the year 1990 and given grade B and then he was promoted to the post of mould machine operator w.e.f. 25.6.2004, who was again promoted as shift Incharge w.e.f. 26.6.2004 and as such continued for six months and then he was demoted/reverted to the rank of mould machine operator without any reason and a written letter dated 22.12.2000 was served upon him which was without any reason and then he made a representation to the management through letter Ex. P1 dated 24.12.2006 but the management did not take any action on his representation nor he was called by the management for any conciliation and as such his demotion is illegal, arbitrary and high handedness of the management and with this demotion, he suffered mental and physical shock and agony.

9. PW-2 Shri Ganga Prashad Singh has stated that he has been working as fitter in the company since 1997 and there is a promotion channel to become supervisor firstly as temporary supervisor and if the company is satisfied with his work, he may be made as permanent supervisor. Rameshwar Dass joined the company as operator and then he worked as a temporary supervisor for six months and then he was demoted to machine operator.

10. PW-3 Shri Habib Khan has stated that he is working as driver to the respondent company since 1988 and the petitioner was earlier supervisor and now he is working as mould machine operator and he used to carry the petitioner from his house to the company when he was supervisor in the company but this facility was withdrawn as he is not a supervisor.

11. To rebut the case of the petitioner, the respondent has examined RW-1 Shri Amarjeet Singh Gill, Manager (Personnel) has stated that the petitioner was engaged as helper in 1987 and then he was promoted as semi skilled worker Grade-1 and was given probation for six months, who was confirmed as mould machine operator Grade-I in 1996. The petitioner indulged himself in a quarrel in the factory against which the action was taken, who apologized in writing vide Ex. RA & RB and the petitioner had entered into an agreement with the respondent which is Ex. RC in which he admitted himself to be a worker, who was never promoted from mould machine operator to some other rank and the claim of the petitioner is false, who was never demoted by the respondent at any time and annexure A1 & A2, Mark A & B have been fabricated by the petitioner which were never submitted to the petitioner by the respondent and the petitioner was confirmed as mould machine operator vide Ex. RC.

12. The case of the petitioner is that he was demoted by the respondent as machine operator from the post of supervisor without any reason which is illegal and against the provisions of Industrial disputes Act, 1947, hence he is entitled for the promotion to the post of supervisor having been working as supervisor.

13. On the contrary, the respondent contends that the petitioner was not demoted by the respondent, who was simply promoted as mould machine operator, who was confirmed after six months, who was never promoted as supervisor by the respondent company at any point to time, hence the petitioner is not entitled to any relief nor entitled to any promotion.

14. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

15. After the close scrutiny of the record of the case, it remains a fact that the petitioner has joined the respondent company as helper in the year 1987, who was subsequently promoted as mould machine operator by the respondent company which fact has not disputed by the respondent. The petitioner has tried to establish on record that he was promoted as supervisor and after six months he was demoted to the post of mould machine operator without any reason but there is nothing on record which could show that the petitioner was actually promoted as supervisor nor any order of promotion as supervisor is proved on record which could show that the petitioner was promoted as supervisor by the respondent at one point of time. Moreover, the petitioner has also admitted by as PW-1 in his cross-examination that the respondent did not issue any letter to him by giving appointment of shift Incharge/supervisor, who has further admitted that he entered into an agreement dated 5.9.2006 with the company which bears his signature. The petitioner has also admitted that he did not draw the salary of supervisor. The petitioner has also examined PW-3 Habib Khan Driver, who has admitted that he is deposing at the instance of the petitioner, who is also the member of the petitioner's trade union and is an interested witness and as such no reliance can be placed on his testimony especially when the petitioner is the President of the BMS Trade Union, who has exercised his influence upon PW-2 Ganga Prashad Singh, his general secretary of BMS Trade Union and PW-3 Habib Khan Driver being the member of the same Trade Union. Moreover, PW-2 has admitted being his coleague and the general secretary of the petitioner trade union BMS to the effect that the petitioner never drew the salary of supervisor from the respondent at any point of time, who never raised any Industrial Dispute against his demotion which creates serious doubt in the genuineness of his deposition. Apart from it, there is nothing on record which could go to show that the petitioner was ever promoted as supervisor by the respondent company as the petitioner has failed to produce any record from the respondent company in order to show that he was promoted by the respondent company as supervisor and after six months, he was demoted as mould machine operator. It is clear case in which the petitioner has himself admitted that no order of his promotion was issued by the respondent company, hence it does not lie in the mouth of the petitioner to claim that he was promoted as supervisor and then demoted as mould machine operator by the respondent company especially when he has failed to produce any record and further never drew the salary of supervisor. Thus, keeping in view the entire evidence on record and having regard to the fact that the petitioner was never promoted as supervisor by the respondent company, I am satisfied that the petitioner was never promoted as supervisor nor demoted by the respondent company. Accordingly, issue no.1 is decided in favour of the petitioner and against the respondent.

Issue No. 2:

16. Since I have held under issue no.1 above that the petitioner was never demoted by the respondent company, hence the petitioner is not entitled to any relief. Accordingly, issue no.2 is decided in favour of respondent and against the petitioner.

Issue No. 3:

17. In support of this issue, no evidence was led by the respondent being the legal issue. I find nothing wrong with this reference which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner fails and is hereby dismissed as a result of which the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 26th Day of May 2009 in the presence of parties counsels.

J.S MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.

Ref No. 34 of 2003.
Instituted on. 4-2-2003.
Decided on. 7-5-2009.

Rajiv Kumar S/o Shri Prem Singh R/o Village Pahloo, P.O Jhalari, Tehsil Barsar, District Hamirpur, HP.
..Petitioner.

Vs.

The Registrar, Dr. Y.S Parmar University of Horticulture and Forestry, Nauni, District Solan, HP.
..Respondent.
Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner :Shri J.C Bhardwaj, Ld. AR.
For respondent : Shri D.K Thakur, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

"Whether the termination of services of Shri Rajiv Kumar S/o Shri Prem Singh w.e.f. 29.2.2000 by the Registrar, Dr. Y.S Parmar University of Horticulture and Forestry, Nauni, Distt. Solan HP without complying the provisions of Industrial disputes Act, 1947 as alleged by the workman is proper and justified? If not, what relief and service benefits the above workman is entitled to?"

2. The petitioner has filed a claim asserting therein that he was appointed in the employment of the university during the month of December, 1997, who remained as such till 29.12.2000 when his services were terminated without any cogent reason and justification, who was given artificial and fictional breaks to defeat the provisions of section 25-B of the Act, who has completed more than 240 days in the employment during the years 1999 and 2000 preceding to his termination and that during the tenure of service, the petitioner performed his duty honestly, with devotion and hard work, who was never served with any warning, show cause notice, explanation and charge sheet, who was never subjected to any domestic enquiry and that the university is a state for the purpose of Article 12, Constitution of India and as such the petitioner could not have been condemned unheard and that the sudden removal of the petitioner from the employment has made the integrity of the petitioner doubtful in the eyes of one and all as he is unemployed and shall remain in future also and as such prayed for reinstatement with full back wages, seniority and other consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections that the petitioner remained in employment of the respondent from December, 1997 to 31.3.2002 as daily paid worker whose employment/engagement depended on the availability of the work and funds position in the specific research project and the respondent university had already around 400 regular beldars and malies and only for seasonal operations when there is rush of work, daily rated persons are engaged. On merits, it is contended that the petitioner was engaged as daily paid labourer during the month of December, 1997 to carry out the various seasonal field operation, who worked at the newly established research station of university w.e.f. May, 2000 to 31.3.2002, who worked for 16 days in 1997, 219 days in 1998 and 194 ½ days in 1999, who was retrenched from the

casual seasonal work with due notice dated 20.10.1999 and then the petitioner again made request for reengagement in the University vide his request dated 4.1.2000, who was allowed to work for one month and then he was again served with the retrenchment notice, who again approached the respondent for engagement, hence the petitioner was engaged at Bhota, who worked for 216 days in the year 2000, 137 ½ days in 2001 and 52 days in 2002 and that the services of the petitioner were not retrenched w.e.f. 31.3.2002, who was offered contractual employment through the notices issued by the Associate Director, RHFRS, Bhota but the petitioner did not apply for the same. It is denied that the services of the petitioner were ever continuous or the petitioner ever completed 240 days in any year from 1997 to 2002 and that the petitioner was rightly retrenched by the respondent and that under Article 12 of the Constitution of India, university is a State and not an industry, hence prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 9.6.2005 on the pleadings of the parties.

1. Whether the termination of services of petitioner by respondent w.e.f. 29.2.2000 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? ..OPR
2. If issue no.1 is not proved, to what relief of service benefits, the petitioner is entitled to? ..OPP
3. Whether the petition is not maintainable as alleged in preliminary objection? ..OPR
4. Relief.

6. I have heard the Ld. Csls. For the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes.
Issue No. 2	Not entitled to any relief.
Issue No. 3	No.

REASONS FOR FINDINGS

Issue No.1:

8. Coming to issue no.1, the petitioner has examined himself as PW-1, who has stated that he was engaged as Labourer in H.P Horticulture University Nauni since 1997, who worked till December, 2000 as per certificate mark A1 to A5, who has worked for more than 240 days in a calendar year. No notice nor compensation was paid to him at the time of his removal. The University sent him Rs. 6,000/- vide letter mark A6 which was paid to him after three years of his removal which was not accepted by him but was sent back by registered letter mark A7 and his juniors S/Shri Gurmeet, Ashwani and Kewal are still working and as such prayed that for reinstatement.

9. To rebut the case of the petitioner, the respondent has examined RW-1 Shri I.D Sharma, Section Officer has stated that the petitioner was engaged as daily paid labourer for seasonal work in December, 1997, who worked for 16 days till 31.12.1997, who was reengaged in Jan. 1998 and worked till December, 1998 by putting in 219 days, who also worked for 190 days in the year 1999 and proved the copy of retrenchment notice Ex. RA. The petitioner was reengaged in Feb. 2000 for one month, who was retrenched by notice dated 28.2.2000 Ex. RB which was received by the petitioner, who was reengaged from May, 2000 to December, 2000 and in Jan. 2002, the respondent gave an offer to the petitioner to work on contract basis vide letter dated 19.1.2002 but the petitioner did not join on 31.12.2003. The respondent sent a bank Draft of Rs. 6,300/- to the petitioner as retrenchment compensation which was refused by the petitioner, who has not completed 240 working days in a calendar year preceding his termination.

10. The Ld. AR for the petitioner has vehemently argued at the very outset that even if a workman has not completed 240 working days in a calendar year preceding his termination but his juniors are retained by the respondent which is clear violation of section 25-G and 25-H of the Industrial disputes Act, 1947, hence the petitioner is also entitled for his reengagement alongwith all consequential benefits.

11. On the contrary, the Ld. Csl. for the petitioner has controverted the arguments of Shri Bhardwaj and has submitted that the petitioner has not worked with the respondent for 240 days in a calendar year preceding her

termination, who was engaged only for seasonal work and after the completion of the work his services were retrenched and even no junior to the petitioner are retained by the respondent, hence she is not entitled to any relief.

12. I have considered the respective contention of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the respondent has served a notice Ex. RA under section 25-F of one month to the petitioner at the time of his retrenchment alongwith compensation of Rs. 6,300/- which was refused by the petitioner. Moreover, no notice nor compensation was required to be given to the petitioner as the petitioner has failed to prove on record that he has completed 240 working days in a calendar year preceding his termination. It is significant to note that the petitioner worked for 60 days in 1997, 219 days in 1998 and 42 days in 1999 as is evident from the certificate placed on record. It is borne out from the record that the petitioner has returned the cheque of compensation to the respondent vide registered AD letter as is evident from mark A7. On the other hand, the respondent has proved on record that the petitioner was engaged for seasonal work and for specific period and not on regular basis, who was terminated on the completion of the work after serving a notice Ex. RA and compensation of Rs. 6,300/- which was refused and returned by the petitioner without any basis. However, it is well settled in *(2006) 6 SCC 221, case titled as Reserve Bank of India V. Gopinath Sharma & Anr.* In which it was held that:

“Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held, had no right to the post.”

14. Similarly in *2006 (2) SCC 794 in case titled as Haryana State Agricultural Marketing Board V. Subhash Chand & Anr.* In which it was held that:-

“If nature of service does not come within purview of definition of retrenchment in section 2(oo), question of applicability of section 25-G does not arise. Bare perusal of offer of appointment (set out in para 2 herein) clearly shows that respondent was appointed on seasonal contracts. Hence, respondent not having been reengaged on expiry thereof, he was not retrenched within meaning of section 2(oo), and his case fell exception in section 2(oo)(bb). Hence, section 25-G was inapplicable in his case and dispensing with engagement of respondent cannot be said to be unwarranted in law.”

15. Apart from it was further held in case titled as *Punjab State Electricity Board V. Darbara Singh reported in 2006 LLR 68 SC.* and in case titled as *Municipal Council Samrala V. Sukhwinder Kaur reported in 2006 LLR 1009 SC.* In which it was held that:-

“material on record established that engagement of workman was for specific period and as such his termination will be excluded as per the provisions of section 2(oo)(bb) of the I.D Act and hence, no retrenchment compensation will be payable on his termination even when he has worked for more than 240 days in the preceding 12 calendar months.”

Now, turning to the other aspect of the case, the petitioner tried to establish on record that his juniors are still continuing with the respondent department but he could not prove on record that on which date they joined the department and infact they were juniors to the petitioner. Moreover, the petitioner was engaged for specific work and for specific time as per the need of the work and as such it does not lie in the mouth of petitioner to claim any right over the post which was offered to him for specific period and for specific work and therefore, the claim of petitioner cannot be accepted for his reinstatement keeping in view the entire facts and circumstances of the case.

16. Thus, having regard to the entire evidence and in view of the above cited rulings, it can safely be concluded that the termination of the petitioner by the respondent w.e.f. 29.2.2000 without complying with the provisions of Industrial Disputes Act, 1947 is legal, proper and justified as no provisions of Industrial Disputes Act, 1947 are attracted in this case. Accordingly, issue no.1 is decided in favour of respondent and against the petitioner.

Issue No. 2:

17. Since, I have held under issue no.1 above, that the services of the petitioner has been legally dispensed with by the respondent without complying with the provisions of Industrial Disputes Act, 1947, hence the petitioner is not entitled to any service benefits. Accordingly, the issue no.2 is answered in negative.

Issue No .3:

18. In support to this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

RELIEF

As a sequel to above discussion and findings on issue no.1 to 3, the claim of the petitioner fails and is hereby dismissed and the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 7th day of May, 2009 in the presence of parties.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.

Ref No. 76 of 2003.
Instituted on. 27-2-2003.
Decided on. 7-5-2009.

Rattni Devi W/o Shri Hari chand R/o Village Kahan P.O Nauni, District Solan (HP).

. .Petitioner.

Vs.

Registrar, Dr. Y.S Parmar University of Horticulture and Forestry, Nauni, District Solan, HP.

. .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, Ld. AR.

For respondent : Shri D.K Thakur, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“क्या श्रीमती रत्नी देवी पत्नी श्री हरीचन्द, दैनिक वेतन भोगी कामगार को रजिस्ट्रार, डा0 यशवन्त सिंह परमार बागवानी एवं वानिकी विश्वविद्यालय नौणी, जिला सोलन, हि0 प्र0 द्वारा दिनांक 30-11-2001 से औद्योगिक विवाद अधिनियम, 1947 में दिए गए प्रावधानों की अनुपालना किए बिना नौकरी से निकाला जाना उचित व न्याय संगत है। यदि नहीं तो कामगार किस राहत, पूर्व वेतन, सेवा लाभों एवं क्षतिपूर्ति की हकदार है?”

2. The petitioner has filed a claim asserting therein that she was appointed in the employment of the respondent during the year 1992, who remained continued in the employment with arbitrary and fictional breaks till her service at first instance was illegally terminated on 7.12.1999, who raised the demand notice, who was reengaged on 18.1.2001 alongwith other co-workmen with similar terms and conditions and that after her joining on 10.8.2001, she was allowed to work only for 97 days till 31.10.2001 whereas other co-workers have been allowed to work and the services of the petitioner are duly covered under section 25-B of the Act as per settlement arrived between the parties and the absence of the petitioner at first instance has been condoned and that the termination of the services of the petitioner on 31.10.2001 is violative of section 25-F of the Act as no notice nor compensation was paid to the petitioner at the time of her termination and even after her termination, many juniors Smt. Usha Kashyap, Kewal Krishan and Kalawati were employed in violation of section 25-G and 25-H of the Act and that the university is owned by the State of Himachal Pradesh and as such is a state for the purpose of Article 12 of Constitution of India and as such the petitioner could not have been condemned unheard and that the petitioner during her tenure of service, performed her duties honestly, with devotion and hard work, who was never served with any warning, show cause notice, explanation and charge sheet, who was never subjected to any domestic enquiry, hence there was no stigma on the work of the petitioner and that the sudden removal of the petitioner by the respondent department has made the integrity of the petitioner doubtful in the eyes of one and all, who is unemployed and shall remain in future also and as such prayed for reinstatement with full back wages, seniority and other consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner which filed reply interalia raising preliminary objections that the claim is barred by limitation and that the petitioner is barred to raise this application under section 25-B of the Industrial disputes Act, 1947 as her services have not been continuous and that the services of the petitioner were never permanent, who was engaged only for seasonal work on the availability of work. On merits, it is contended that the petitioner was engaged w.e.f. 1.1.1998 for seasonal field operations, who did not complete 240 days in any calendar year, who was asked vide letter annexure R-1 that incase she worked in the university prior to 1998, she may submit an evidence in support of her attendance but she failed to submit an evidence in her support and as such the petitioner had made wrong and false claim before the labour-cum-conciliation officer, Solan. The petitioner had worked in different spells for seasonal work as and when there was work available in the respondent university and since the petitioner is local resident of this area, she casually came for work when she was free from home, who worked for 149 days in 1998, 37 days in 1999 and 97 days in 2001, and that the petitioner was engaged only for seasonal work subject to availability of work and funds as per the sanction of the competent authority, who only worked 150 days in a calendar year and failed to complete 240 days in any calendar year, hence the petitioner is not entitled for the protection of the Industrial Disputes Act, 1947. It is denied that so many juniors to her have been retained by the respondent, hence prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 9.6.2005 on the pleadings of the parties.

1. Whether the termination of services of the petitioner by the respondent w.e.f. 31.10.2001 without complying the provisions of I.D Act, 1947 is proper and justified? . . . *OPR.*
2. If issue no.1 is not proved, to what relief of service benefits, the petitioner is entitled to? . . . *OPP.*
3. Whether the petition is barred by limitation as alleged in preliminary objection? . . . *OPR.*
4. Whether the petitioner has abandoned the job as alleged in preliminary objection? . . . *OPR.*
5. Relief.

6. I have heard the Ld. Csls. For the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues areas under:

Issue No. 1	Yes.
Issue No. 2	Not entitled to any relief.
Issue No. 3	No.
Issue No. 4	No.

REASONS FOR FINDINGS

Issue No.1:

8. Coming to this issue, the petitioner has examined herself as PW-1, who has stated that she was engaged in the university as beldar for grass cutting in 1992 and worked till 2001. No notice nor compensation was paid to her at the time of her removal from the job and Ashwani, Prem, Gurmeet, Kala Vati and Geeta Ram were the juniors to her, who was not given the work during the complete year whereas the respondent was given the work to the junior throughout the year, who had not left the job of her own and the juniors are still working and as such prayed for reinstatement.

9. To rebut the case of the petitioner, the respondent has examined RW-1 Shri N.K Gupta Senior Assistant of the respondent University has stated that the petitioner was engaged as beldar in 1998 for 149 days, 37 days in 1999 , 97 days in 2001, who has not even worked for single day in 2000, 2002 and 2003 and proved the Standing orders of the University Ex. RA and the demand notice of the petitioner is Ex. RB and the proceedings of the conciliation officer is Ex. RC and they have engaged the petitioner as per conciliation for 19 days as per the availability of the work and then they gave the retrenchment notice to the petitioner which is Ex. RD and there is no regular work and the petitioner was engaged for seasonal work only, who never completed 240 days and the HP Govt. has now imposed complete ban on the employment of daily paid labourers which are Ex. RE and RF.

10. The Ld. AR for the petitioner has vehemently argued at the very outset that even if a workman has not completed 240 working days in a calendar year preceding his termination but his juniors are retained by the respondent which is clear violation of section 25-G and 25-H of the Industrial disputes Act, 1947, hence the petitioner is also entitled for her reengagement alongwith all consequential benefits.

11. On the contrary, the Ld. Csl. for the petitioner has controverted the arguments of Shri Bhardwaj and has submitted that the petitioner has not worked with the respondent for more than 240 days in any calendar year preceding her termination, who was engaged only for seasonal work and after the completion of the work her services were retrenched and even no junior to the petitioner are retained by the respondent, hence she is not entitled to any relief.

12. I have considered the respective contention of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged by the respondent University as daily paid worker in 1998, who worked for 149 days in 1998, 37 days in 1999 and 97 days in 2001 meaning thereby that the petitioner has not completed 240 working days in a 12 calendar months preceding her termination which fact has also been admitted by the petitioner in her cross examination that during the entire period, she had not worked for more than 240 days in a year, hence the case of the petitioner does not fall under section 25-F of the Industrial disputes Act, 1947.

14. Now adverting to the other aspect of the case, the petitioner has tried to establish on record that she was terminated without notice but it remains a fact that a notice of retrenchment Ex. RD was given to the petitioner and as such it does not lie in the mouth of the petitioner to say that she was illegally retrenched from service by the respondent. Moreover, the petitioner was engaged as daily wages workman on seasonal work and for specific period as per the need of work and subject to availability of funds and the services of the petitioner were dispensed with on the completion of the work by the respondent after serving a valid notice which was not the requirement of law as the petitioner failed to prove on record that she had completed 240 working days in 12 calendar months preceding her termination. On the other hand, the respondent has proved on record that the petitioner was engaged for seasonal work and for specific period. However, it is well settled in (2006) 6 SCC 221, case titled as Reserve Bank of India V. Gopinath Sharma & Anr. In which it was held that :-

“Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held, had no right to the post.”

15. Similarly in 2006 (2) SCC 794 in case titled as Haryana State Agricultural Marketing Board V. Subhash Chand & Anr. In which it was held that:-

“If nature of service does not come within purview of definition of retrenchment in section 2(oo), question of applicability of section 25-G does not arise. Bare perusal of offer of appointment (set out in para 2 herein) clearly shows that respondent was appointed on seasonal contracts. Hence, respondent not having been reengaged on expiry thereof, he was not retrenched within meaning of section 2(oo), and his case fell exception in section 2(oo)(bb). Hence, section 25-G was inapplicable in his case and dispensing with engagement of respondent cannot be said to be unwarranted in law.”

16. Moreover, it was further held in case titled as Punjab State Electricity Board V. Darbara Singh reported in 2006 LLR 68 SC. and a case titled as Municipal Council Samrala V. Sukhwinder Kaur reported in 2006 LLR 1009 SC. In which it was held that:-

“material on record established that engagement of workman was for specific period and as such his termination will be excluded as per the provisions of section 2(oo)(bb) of the I.D Act and hence, no retrenchment compensation will be payable on his termination even when he has worked for more than 240 days in the preceding 12 calendar months.”

Thus, having regard to the entire evidence on record and in view of the fact that the petitioner was engaged for seasonal work and for specific period, whose services were dispensed with on completion of work, who cannot claim a right over the post especially when she could not prove on record that she had completed 240 working days in 12 calendar months preceding her termination. Besides it, the petitioner has failed to prove on record that the so called juniors are infact the juniors to the petitioner and they are still continuing with the respondent. It is significant to note that no official record has been summoned by the petitioner in order to show that infact they are the juniors to the petitioner and are still continuing with the respondent. In view of no such evidence on record, it can safely be held that no juniors to the petitioner are retained by the respondent University. Accordingly I have no hesitation in coming to the conclusion that termination of services of petitioner by respondent w.e.f. 31.10.2001 after complying with the

provisions of Industrial disputes Act, 1947 is legal, proper and justified and as such issue is decided in favour of respondent and against the petitioner.

Issue No. 2 :

17. Since, I have held under issue no.1 above, that the services of the petitioner has been legally dispensed with by the respondent after complying with the provisions of Industrial Disputes Act, 1947, hence the petitioner is not entitled to any service benefits. Accordingly, the issue no.2 is answered in negative.

Issue No. 3:

18. In support of this issue, no evidence was led by the respondent being the legal issue. It is well settled that there is no limitation under the I.D Act, 1947 as it was held by their lordship of Hon'ble Supreme Court as reported in (1999) 6 SCC 82 incase titled as Ajayab Singh Vs. Sirhind Co-operative Marketing -cum- processing Service Society Limited and Another. in which it was held that:-

“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Thus, on the strength of this ruling, it can safely be concluded that this petition is not barred by limitation. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondent.

Issue No. 4:

19. In support of this issue, no evidence was led by the respondent in order to show that the petitioner has abandoned the job of her own. Moreover, it is the case of the respondent that the services of the petitioner were dispensed with on the completion of the work by the respondent by serving a notice upon her and obviously therefore, the petitioner has not abandoned the job of her own, whose services were legally dispensed with by the respondent. Accordingly, the issue is decided in favour of petitioner and against the respondent.

RELIEF

As a sequel to above discussion and findings on issue no.1 to 4, the claim of the petitioner fails and is hereby dismissed and the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 7th day of May, 2009 in the presence of parties.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.

Ref No. 77 of 2003.
Instituted on. 27-2-2003.
Decided on. 7-5-2009.

Santosh Devi W/o Shri Babu Ram R/o Village Pandah P.O Oachghat, District Solan (HP). . .Petitioner.

Vs.

Registrar, Dr. Y.S Parmar University of Horticulture and Forestry, Nauni, District Solan, HP. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, Ld. AR.

For respondent : Shri D.K Thakur, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“क्या श्रीमती सन्तोष देवी पत्नी श्री बाबूराम को रजिस्ट्रार, डा0 यशवन्त सिंह परमार बागवानी एवं वानिकी विश्वविद्यालय नौणी, जिला सोलन, हि0प्र0 द्वारा दिनांक 31-10-2001 से औद्योगिक विवाद अधिनियम, 1947 में दिए गए प्रावधानों की अनुपालना किए बिना नौकरी से निकाला जाना उचित व न्याय संगत है। यदि नहीं तो कामगार किस राहत, पूर्व वेतन, सेवा लाभों एवं क्षतिपूर्ति की हकदार है।”

2. The petitioner has filed a claim asserting therein that she was appointed in the employment of the respondent during the year 1992, who remained continued in the employment with arbitrary and fictional breaks till her service at first instance was illegally terminated on 7.12.1999, who raised the demand notice, who was reengaged on 18.1.2001 alongwith other co-workmen with similar terms and conditions and that after her joining on 10.8.2001, she was allowed to work only for 97 days till 31.10.2001 whereas other co-workers have been allowed to work and the services of the petitioner are duly covered under section 25-B of the Act as per settlement arrived between the parties and the absence of the petitioner at first instance has been condoned and that the termination of the services of the petitioner on 31.10.2001 is violative of section 25-F of the Act as no notice nor compensation was paid to the petitioner at the time of her termination and even after her termination, many juniors Smt. Usha Kashyap, Kewal Krishan and Kalawati were employed in violation of section 25-G and 25-H of the Act and that the university is owned by the State of Himachal Pradesh and as such is a state for the purpose of Article 12 of Constitution of India and as such the petitioner could not have been condemned unheard and that the petitioner during her tenure of service, performed her duties honestly, with devotion and hard work, who was never served with any warning, show cause notice, explanation and charge sheet, who was never subjected to any domestic enquiry, hence there was no stigma on the work of the petitioner and that the sudden removal of the petitioner by the respondent department has made the integrity of the petitioner doubtful in the eyes of one and all, who is unemployed and shall remain in future also and as such prayed for reinstatement with full back wages, seniority and other consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner which filed reply interalia raising preliminary objections that the claim is barred by limitation and that the petitioner is barred to raise this application under section 25-B of the Industrial disputes Act, 1947 as her services have not been continuous and that the services of the petitioner were never permanent, who was engaged only for seasonal work on the availability of work. On merits, it is contended that the petitioner was engaged w.e.f. 1.1.1998 for seasonal field operations, who did not complete 240 days in any calendar year, who was asked vide letter annexure R-1 that incase she worked in the university prior to 1998, she may submit an evidence in support of her attendance but she failed to submit an evidence in her support and as such the petitioner had made wrong and false claim before the labour-cum-conciliation officer, Solan. The petitioner had worked in different spells for seasonal work as and when there was work available in the respondent university and since the petitioner is local resident of this area, she casually came for work when she was free from home, who worked for 149 days in 1998, 37 days in 1999 and 97 days in 2001, and that the petitioner was engaged only for seasonal work subject to availability of work and funds as per the sanction of the competent authority, who only worked 150 days in a calendar year and failed to complete 240 days in any calendar year, hence the petitioner is not entitled for the protection of the Industrial Disputes Act, 1947. It is denied that so many juniors to her have been retained by the respondent, hence prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 9.6.2005 on the pleadings of the parties :—

1. Whether the termination of services of the petitioner by the respondent w.e.f. 31.10.2001 without complying the provisions of I.D Act, 1947 is proper and justified? . . .*OPR.*
2. If issue no.1 is not proved, to what relief of service benefits, the petitioner is entitled to? . . .*OPP.*
3. Whether the petition is barred by limitation as alleged in preliminary objection? . . .*OPR.*
4. Whether the petitioner has abandoned the job as alleged in preliminary objection? . . .*OPR.*
5. Relief.

6. I have heard the Ld. Csls. For the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues areas under:

Issue No. 1	Yes.
Issue No. 2	Not entitled to any relief.
Issue No. 3	No.
Issue No. 4	No.

REASONS FOR FINDINGS

Issue No.1 :

8. Coming to this issue, the petitioner has examined herself as PW-1, who has stated that she was engaged in the university as beldar for grass cutting in 1992 and worked till 2001. No notice nor compensation was paid to her at the time of her removal from the job and Ashwani, Prem, Gurmeet, Kala Vati and Geeta Ram were the juniors to her, who was not given the work during the complete year whereas the respondent was given the work to the junior throughout the year, who had not left the job of her own and the juniors are still working and as such prayed for reinstatement.

9. To rebut the case of the petitioner, the respondent has examined RW-1 Shri N.K Gupta Senior Assistant of the respondent University has stated that the petitioner was engaged as beldar in 1998 for 149 days, 37 days in 1999, 97 days in 2001, who has not even worked for single day in 2000, 2002 and 2003 and proved the Standing orders of the University Ex. RA and the demand notice of the petitioner is Ex. RB and the proceedings of the conciliation officer is Ex. RC and they have engaged the petitioner as per conciliation for 19 days as per the availability of the work and then they gave the retrenchment notice to the petitioner which is Ex. RD and there is no regular work and the petitioner was engaged for seasonal work only, who never completed 240 days and the HP Govt. has now imposed complete ban on the employment of daily paid labourers which are Ex. RE and RF.

10. The Ld. AR for the petitioner has vehemently argued at the very outset that even if a workman has not completed 240 working days in a calendar year preceding his termination but his juniors are retained by the respondent which is clear violation of section 25-G and 25-H of the Industrial disputes Act, 1947, hence the petitioner is also entitled for her reengagement alongwith all consequential benefits.

11. On the contrary, the Ld. Csl. for the petitioner has controverted the arguments of Shri Bhardwaj and has submitted that the petitioner has not worked with the respondent for more than 240 days in any calendar year preceding her termination, who was engaged only for seasonal work and after the completion of the work her services were retrenched and even no junior to the petitioner are retained by the respondent, hence she is not entitled to any relief.

12. I have considered the respective contention of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged by the respondent University as daily paid worker in 1998, who worked for 149 days in 1998, 37 days in 1999 and 97 days in 2001 meaning thereby that the petitioner has not completed 240 working days in a 12 calendar months preceding her termination which fact has also been admitted by the petitioner in her cross examination that during the entire period, she had not worked for more than 240 days in a year, hence the case of the petitioner does not fall under section 25-F of the Industrial disputes Act, 1947.

14. Now adverting to the other aspect of the case, the petitioner has tried to establish on record that she was terminated without notice but it remains a fact that a notice of retrenchment Ex. RD was given to the petitioner and as such it does not lie in the mouth of the petitioner to say that she was illegally retrenched from service by the respondent. Moreover, the petitioner was engaged as daily wages workman on seasonal work and for specific period as per the need of work and subject to availability of funds and the services of the petitioner were dispensed with on the completion of the work by the respondent after serving a valid notice which was not the requirement of law as the petitioner failed to prove on record that she had completed 240 working days in 12 calendar months preceding her termination. On the other hand, the respondent has proved on record that the petitioner was engaged for seasonal work and for specific period. However, it is well settled in (2006) 6 SCC 221, case titled as Reserve Bank of India V. Gopinath Sharma & Anr. In which it was held that :-

“Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held, had no right to the post.”

15. Similarly in 2006 (2) SCC 794 in case titled as Haryana State Agricultural Marketing Board V. Subhash Chand & Anr. In which it was held that:-

“If nature of service does not come within purview of definition of retrenchment in section 2(oo), question of applicability of section 25-G does not arise. Bare perusal of offer of appointment (set out in para 2 herein) clearly shows that respondent was appointed on seasonal contracts. Hence, respondent not having been reengaged on expiry thereof, he was not retrenched within meaning of section 2(oo), and his case fell exception in section 2(oo)(bb). Hence, section 25-G was inapplicable in his case and dispensing with engagement of respondent cannot be said to be unwarranted in law.”

16. Moreover, it was further held incase titled as Punjab State Electricity Board V. Darbara Singh reported in 2006 LLR 68 SC. and a case titled as Municipal Council Samrala V. Sukhwinder Kaur reported in 2006 LLR 1009 SC. In which it was held that:-

“material on record established that engagement of workman was for specific period and as such his termination will be excluded as per the provisions of section 2(oo)(bb) of the I.D Act and hence, no retrenchment compensation will be payable on his termination even when he has worked for more than 240 days in the preceding 12 calendar months.”

Thus, having regard to the entire evidence on record and in view of the fact that the petitioner was engaged for seasonal work and for specific period, whose services were dispensed with on completion of work, who cannot claim a right over the post especially when she could not prove on record that she had completed 240 working days in 12 calendar months preceding her termination. Besides it, the petitioner has failed to prove on record that the so called juniors are infact the juniors to the petitioner and they are still continuing with the respondent. It is significant to note that no official record has been summoned by the petitioner in order to show that infact they are the juniors to the petitioner and are still continuing with the respondent. In view of no such evidence on record, it can safely be held that no juniors to the petitioner are retained by the respondent University. Accordingly I have no hesitation in coming to the conclusion that termination of services of petitioner by respondent w.e.f. 31.10.2001 after complying with the provisions of Industrial disputes Act, 1947 is legal, proper and justified and as such issue is decided in favour of respondent and against the petitioner.

Issue No. 2 :

17. Since, I have held under issue no.1 above, that the services of the petitioner has been legally dispensed with by the respondent after complying with the provisions of Industrial Disputes Act, 1947, hence the petitioner is not entitled to any service benefits. Accordingly, the issue no.2 is answered in negative.

Issue No. 3 :

18. In support of this issue, no evidence was led by the respondent being the legal issue. It is well settled that there is no limitation under the I.D Act, 1947 as it was held by their lordship of Hon'ble Supreme Court as reported in (1999) 6 SCC 82 incase titled as Ajayab Singh Vs. Sirhind Co-operative Marketing -cum- processing Service Society Limited and Another. in which it was held that:-

“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Thus, on the strength of this ruling, it can safely be concluded that this petition is not barred by limitation. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondent.

Issue No. 4 :

19. In support of this issue, no evidence was led by the respondent in order to show that the petitioner has abandoned the job of her own. Moreover, it is the case of the respondent that the services of the petitioner were dispensed with on the completion of the work by the respondent by serving a notice upon her and obviously therefore, the petitioner has not abandoned the job of her own, whose services were legally dispensed with by the respondent. Accordingly, the issue is decided in favour of petitioner and against the respondent.

RELIEF

As a sequel to above discussion and findings on issue no.1 to 4, the claim of the petitioner fails and is hereby dismissed and the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 7th day of May, 2009 in the presence of parties.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.

Ref No. 172 of 2002.
Instituted on. 21-6-2002.
Decided on. 7-5-2009.

Surinder Sharma S/o Shri Hem Chand Sharma R/o Village Dadgi, P.O Sainj via Dhami, Tehsil Suni, District Solan, HP. .Petitioner.

Vs

The Registrar, Dr. Y.S Parmar University of Horticulture and Forestry, Nauni, District Solan, HP.

. Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, Ld. AR.

For respondent : Shri D.K Thakur, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

"Whether the termination of services of Shri Surinder Sharma by the employer i.e the Registrar, Dr. Y.S Parmar University of Horticulture and Forestry, Nauni, Distt. Solan HP w.e.f. 1.12.1999 without complying the provisions of section 25-G and 25-H of the Industrial disputes Act, 1947 is proper and justified? If not, what relief and service benefits the above workman is entitled to?"

2. The petitioner has filed a claim asserting therein that he was inducted into the employment of the respondent during the month of July 1998, who remained continued in the employment till 1.12.1999 when his services were arbitrarily and illegally dispensed with by way of retrenchment whereas many juniors to the petitioner have been retained in the employment and the seniors were retrenched and as such the respondent knowingly ignored the merits in the case of the workman as well as ignored the provisions of section 25-G and 25-H of the Industrial Disputes Act, 1947 and that the services of the workman was continuous for the purpose of section 25-B of the Act as the petitioner has worked for more than 240 days during the tenure of his employment preceding twelve calendar months, hence the petitioner is entitled to the protective cover of the labour law legislation and that during the tenure of service, the petitioner performed his duty honestly, with devotion and hard work, who was never served with any warning, show cause, explanation and charge sheet, who was never subjected to any domestic enquiry, hence there was no stigma on the work of the petitioner and that the university is owned by the State of Himachal Pradesh and as such is a state for the purpose of Article 12, Constitution of India and as such the petitioner could not have been condemned unheard and that the respondent university has committed serious lapse for non compliance of mandatory provisions of law as it a fit case for retrenchment as the respondent did not serve any notice to the petitioner nor paid any retrenchment compensation and the respondent university is fully covered under section 25-K and that the respondent has applied hire and fire formula and the petitioner has been condemned unheard in violation of labour law legislation and as such prayed for reinstatement with full back wages, seniority and other consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner which filed reply inter alia raising preliminary objections that the services of the petitioner were not permanent, who was casual, who was engaged as per the requirement of the field work by the respondent to carry out manual farm operations. On merits, it is contended that the petitioner was engaged by the respondent university as daily paid labourer from July, 1998 for short durations in different spells, whose services were retrenched after giving proper notice of retrenchment vide letter dated 27.2.2003 due to non availability of funds and work, who worked for 125 days in 1998 and 217 days in 1999. It is denied that so many juniors to the petitioner have been retained by the respondent and the services of the petitioner being the junior most has rightly been dispensed with in accordance with the section 25-G of the Industrial Disputes Act and that the petitioner has not worked for 240 days in a calendar year, hence there was no necessity to give three months prior notice to the petitioner and that no hire and fire formula has been adopted by the respondent as the services of the petitioner have been dispensed with in accordance with the provisions of section 25-G of the Industrial disputes Act, 1947, hence prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 9.11.2004 on the pleadings of the parties.

1. Whether the termination of services of Shri Surinder Sharma, petitioner by respondents w.e.f. 1.12.1989 without complying the provisions of section 25-G and H of the Industrial disputes Act, 1947 is proper and justified? . . . *OPR.*
2. If issue no.1 is not proved, to what relief of service benefits, the petitioner is entitled to? . . . *OPP.*
3. Whether the reference is not maintainable as alleged in preliminary objection? . . . *OPR.*
4. Relief.

6. I have heard the Ld. Csls. for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues areas under:

Issue No. 1	Yes.
Issue No. 2	Not entitled to any relief.
Issue No. 3	No.
Relief.	Reference answered in negative per operative part of award

REASONS FOR FINDINGS

Issue No.1:

8. Coming to Issue No.1, the petitioner has examined himself as PW-1, who has stated that he was engaged on daily wages as beldar by the respondent in July, 1998, who worked till November, 1999, who was disengaged from 1.12.1999. No notice nor compensation was paid to him and many people were engaged as afresh, who are S/Shri Vinod Thakur, Bhushan Thakur, Khumbu Dass and Vidya Devi and the seniority list of the labourers who were engaged after him is mark X and there was no complaint about his work and as such prayed that he should be adjusted in the university as other people were adjusted.

9. To rebut the case of the petitioner, the respondent has examined RW-1 Dr. Narain Singh Chauhan, Professor and Head of Department of Forest Products has stated that the petitioner was engaged on seasonal basis in 1999 till March, who was again engaged in July till 30.11.1999 when the services of the petitioner were disengaged as beldar and proved the notices Ex. RA and Ex. RB. The petitioner worked for 217 days in total and no junior had been engaged or retained. They are engaging the labour on contract basis for 89 days in a calendar year for seasonal work and the petition has been wrongly filed by the petitioner.

10. The Ld. AR for the petitioner has vehemently argued at the very out set that even the petitioner has not completed 240 working days in a calendar year preceding his termination but the respondent has retained the junior to the petitioner, who are still continuing with the respondent which is clear violation of the provisions section 25-G and H of the Industrial Disputes Act, 1947, hence the petitioner is entitled for his reengagement alongwith all consequential benefits.

11. On the contrary, the Ld. Csl. for the petitioner has controverted the arguments of Shri Bhardwaj, AR and has submitted that the petitioner has not completed 240 days in a calendar year preceding his termination with the respondent, who was engaged only for seasonal work and for specified period and after the completion of the work his

services were retrenched vide notices Ex. RA and Ex. RB and even no junior to the petitioner are retained by the respondent, hence the petitioner is not entitled to any relief.

12. I have considered the respective contention of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it is clear that the petitioner was engaged for specific work and for specific time as it is evident from the notice Ex. RA and Ex. RB placed on record which was not disputed by the petitioner. It is significant to note that the petitioner was engaged as daily paid labour upto 31.3.1999, whose services were retrenched on 1.4.1999 vide notice Ex. RA after serving a notice of one month in which it was clarified that no extension was received from the Project. It is also borne out from the record vide notice Ex. RB that the petitioner was subsequently reengaged upto 30.11.1999 for specific period and as such it is clear that the petitioner was engaged as daily paid labour subject to availability of work and the funds provided for the project and his services were dispensed with on the completion of work and as such the petitioner cannot claim any right over that post especially when he was engaged for specific work and for specified period. It is well settled in (2006) 6 SCC 221, case titled as Reserve Bank of India V. Gopinath Sharma & Anr. In which it was held that :-

“Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held, had no right to the post.”

14. Similarly in 2006 (2) SCC 794 in case titled as Haryana State Agricultural Marketing Board V. Subhash Chand & Anr. In which it was held that:-

“If nature of service does not come within purview of definition of retrenchment in section 2(oo), question of applicability of section 25-G does not arise. Bare perusal of offer of appointment (set out in para 2 herein) clearly shows that respondent was appointed on seasonal contracts. Hence, respondent not having been reengaged on expiry thereof, he was not retrenched within meaning of section 2(oo), and his case fell exception in section 2(oo)(bb). Hence, section 25-G was inapplicable in his case and dispensing with engagement of respondent cannot be said to be unwarranted in law.”

15. Apart from it was further held incase titled as Punjab State Electricity Board V. Darbara Singh reported in 2006 LLR 68 SC. and incase titled as Municipal Council Samrala V. Sukhwinder Kaur reported in 2006 LLR 1009 SC. In which it was held that:-

“material on record established that engagement of workman was for specific period and as such his termination will be excluded as per the provisions of section 2(oo)(bb) of the I.D Act and hence, no retrenchment compensation will be payable on his termination even when he has worked for more than 240 days in the preceding 12 calendar months.”

Now, turning to the other aspect of the case, the petitioner tried to establish on record that his juniors are still continuing with the respondent department but he could not prove on record that on which date they joined the department and infact they were juniors to the petitioner. Moreover, the petitioner was engaged for specific work and for specific time as per the need of the work and as such it does not lie in the mouth of petitioner to claim any right over the post which was offered to him for specific period and for specific work and therefore, the case of petitioner cannot be accepted for his reinstatement keeping inview the entire facts and circumstances of the case.

16. Thus, having regard to the entire evidence and inview of the above cited rulings, it can safely be concluded that the termination of the petitioner by the respondent without complying with the provisions of section 25-G and H of the Industrial Disputes Act, 1947 is legal and proper as no provisions of section 25-G and 25-H are attracted in this case. Accordingly, issue no.1 is decided in favour of respondent and against the petitioner.

Issue No. 2 :

17. Since, I have held under issue no.1 above, that the services of the petitioner has been legally dispensed with by the respondent without complying with the provisions of section 25-G & H of the Industrial Disputes Act, 1947, hence the petitioner is not entitled to any service benefits. Accordingly, the issue No.2 is answered in negative.

Issue No. 3 :

18. In support to this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. Inview of no evidence on record on this issue, it is accordingly decided in negative.

RELIEF

As a sequel to above discussion and findings on issue no.1 to 3, the claim of the petitioner fails and is hereby dismissed and the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 7th day of May, 2009 in the presence of parties.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING
JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA, HP.

Ref no. 120 of 2004.
Instituted on 27.7.2004.
Decided on. 14.5.2009.

Nand Kishore s/o Shri Puran Singh, R/o Village
Fatehpur, P.O Harbetpur, District Dehradun
(Utttranchal).

Petitioner.

Vs.



The Director, Himalyan Forest and Agro
Products Pvt. Ltd, Village Barotiwala, P.O
Shivpur, Tehsil Paonta Sahib, District
Sirmour, HP.

Respondent.

[Signature]
Presiding Judge,
4. P. Industrial Tribunal - Cum ;
Labour Court, Shimla

Reference under section 10 of
the Industrial Disputes Act,
1947.

For petitioner : Shri Niranjana Verma, Ld. Csl.
For respondent : Shri Ramesh Negi, Ld. Csl.

AWARD

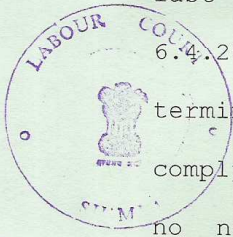
1. The following reference has been
received from appropriate government by this Court
for adjudication:-

*"Whether the termination of services of Shri
Nand Kishore S/o Shri Puran Singh, Finishing
Supervisor by the Director, Himalyan Forest &
Agro Products Pvt. Ltd. Village Barotiwala,
P.O Shivpur, Tehsil Paonta Sahib, District
Sirmour, HP w.e.f. 6.4.2003 without complying
the provisions of Industrial Disputes Act,
1947 is proper and justified? If not, what*

relief of service benefits Shri Nand Kishore is entitled to?"

2. The petitioner has filed a claim asserting therein that he was employed as finishing supervisor with the respondent for the last eleven years, who continued as such till 6.4.2003 whose services were arbitrarily terminated without assigning reason and without complying with the mandatory provisions of law as no notice nor compensation was given to the petitioner and that the termination of the petitioner on 6.4.2003 amounts to retrenchment under section 25-F of the Industrial disputes Act, 1947 and that the petitioner had made requests, who was not allowed to join the duties and even no enquiry has been held ~~not~~ any opportunity being heard has been afforded to the petitioner and that the termination of the petitioner is illegal and void and as such prayed for reinstatement with all consequential benefits including continuity of service, seniority and back wages, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply inter alia raising preliminary objection of abandonment. On merits, it is contended that the



[Signature]
Presiding Judge,
H.P. Industrial Tribunal,
Labour Court, Shimla

petitioner was employed as supervisor on hot process and finishing with the respondent w.e.f. 20.12.1994 to 6.4.2003, who absented himself from duty w.e.f 3.7.2000 to 1.10.2000, who joined on 1.10.2000, who was careless in his duties and on 6.4.2003 while the petitioner working on the hot process and finishing section due to carelessness, the company suffered loss upto Rs. 7000/- and then the company issued notice to the petitioner on 6.4.2003 which is annexure R-1, who did not reply the notice and even the petitioner did not turn up for work and abandoned the job himself, hence there is no question of retrenchment and that the respondent has made requests many times to the petitioner to join his duties, who wilfully absented himself and did not turn up for work and as such prayed for dismissal of the claim.

4. No rejoinder filed. The following issues were framed by this Court on 21.4.2006 on the pleadings of the parties:

1. Whether the service of the petitioner has been illegally terminated w.e.f 6.4.2003 without complying the provisions of the Industrial disputes Act, 1947? If so, its effect?

OPP....

2. If issue no.1 is proved in affirmative, to what relief of service benefits, the petitioner is entitled to?

OPP....



[Signature]
 Presiding Judge,
 Industrial Tribunal - Cum
 Labour Court, Shimla

3. Whether the petitioner has himself abandoned the job? If so, its effect?

OPR....

4. Relief.

5. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes.
Issue no. 2	Entitled for reinstatement alongwith seniority and continuity but without back wages.
Issue no.3	No.
Relief.	Reference answered in affirmative per operative part of award.

Reasons for findings.

Issue no.1.

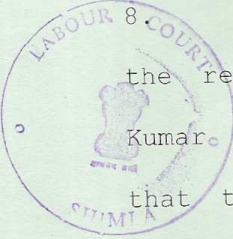
7. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged by the respondent on 20.4.1993 and worked till 6.4.2003 whose pay was Rs. 2,000/- plus Bonus whose services were terminated without any reason on 6.4.2003. No notice nor compensation has been given to him at the time of his removal,



[Signature]
Presiding Judge,
H.P. Industrial Tribunal - Cum -
Labour Court, Shimla

who was also threatened by the respondent, who visited the factory twice thrice but he was not permitted, who sent the letter through UPC to the respondent which is Ex. PA but despite his letter, he was not allowed by the respondent to join back.

To rebut the case of the petitioner, the respondent has examined RW-1 Shri Satender Kumar Sood, Director, Himalyan Agro has stated that the petitioner while working on 6.4.2003, spoiled the product of the company for which a letter was issued to the petitioner to clarify his position which is Ex. RA but the petitioner did not report for duties on the next day, who came after three-four days and took the salary for March, 2003 against proper receipt and they were called by the Labour Inspector, who told that the petitioner was not prepared to work and his dues including gratuity would be paid to him and the petitioner was insisting the payment for three months, hence the dispute was not settled and the services of the petitioner were not terminated by the company but he himself abandoned the job and earlier also the petitioner left the job in 2000 for three months, hence the petitioner is not entitled to any relief.



[Signature]
Sitting Judge,
H.P. Industrial Tribunal
Labour Court, Shimla

9. The case of the petitioner is that he being the finishing supervisor having worked for eleven years with the respondent company and his termination without notice and compensation is illegal and even no enquiry was conducted by the respondent against him and as such he is entitled for reinstatement with all consequential benefits.

10. On the contrary, the respondent contends that the petitioner was not terminated from service, who was simply asked to clarify his position when the company suffered loss of Rs. 1000/- due to his carelessness, who ultimately abandoned the job of his own, hence the petitioner is not entitled to any relief.

11. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged by the respondent on 20.12.1994, who continued as such till 6.4.2003 meaning thereby that the petitioner had worked with the respondent company for more than nine years without break, who was removed by the respondent without notice, charge sheet and without conducting any enquiry on 6.4.2003. No



[Signature]
Presiding Judge,
H. P. Industrial Tribunal - Cum
Labour Court, Shimla

doubt, that the respondent has tried to establish on record that the company suffered a loss of Rs. 7000/- due to negligence of the petitioner for which the petitioner was called upon to explain his position as per letter Ex. RA placed on the record which was not replied by the petitioner.

The respondent has also tried to establish on record that the petitioner was habitual absentee, who usually remained absent from his duties but it

remains a fact that the respondent has not conducted any domestic enquiry against the

petitioner for this misconduct. It is also proved

on record that the respondent company has not afforded an opportunity to the petitioner to defend himself as no explanation nor any domestic enquiry was conducted against the petitioner by the respondent company at any point of time which is clear violation of principle of natural justice.

13. Now, turning to the legal aspect of the case, the respondent has failed to prove on record that they served a notice under section 25-F of the Industrial disputes Act, 1947 and also failed to pay retrenchment compensation to the petitioner before retrenching him from service which is illegal and improper. it is borne



Residing Judge,
H. P. Industrial Tribunal - Cum -
Labour Court, Shimla

out from the record that the respondent has failed to give proper and legal notice to the petitioner under section 25-F of the Industrial disputes Act, 1947 as no one month notice nor compensation was paid to the petitioner at the time of termination of service of petitioner which are the requirement of section 25-F of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by the

Hon'ble Supreme Court incase titled as Uttranchal Forests Development Corporation & Anr Vs. Jabar Singh & Ors. as reported in 2007-II-LLJ 95 in

Presiding Judge,
H. P. Industrial Tribunal,
Labour Court, Shimla

it was held that :

"Retrenchment notice in question not complying with two conditions of section 25-N namely giving three months notice to workmen in writing or wages in lieu thereof and taking prior permission of government-Workman, therefore entitled to reinstatement with full back wages"

15. On the other hand, the petitioner has proved on record that he had put in more than nine years of service preceding his termination and moreover, no notice nor any compensation was paid to the petitioner at the time of his termination. Moreover, the continuous service of the petitioner is not disputed by the respondent on record and obviously therefore, I am of the firm opinion that no notice nor any enquiry was

conducted against the petitioner by the respondent at any point of time and as such the termination of the petitioner from service w.e.f. 6.4.2003 by the respondent is held illegal and without any basis and without complying with the provisions of the Industrial Disputes Act, 1947. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

Issue no.2.

16. Since I have held under issue no.1 above, that the services of the petitioner have been illegally terminated by the respondent without complying with the Industrial Disputes Act, 1947, hence the petitioner is held entitled to be reinstated in service with continuity and seniority. However, the petitioner is not entitled to any back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of petitioner and against the respondent.

Issue no.3.

16. Since I have held under issue no.1 above that the services of the petitioner have been illegally terminated by the respondent without following the provisions of Industrial



[Signature]
Presiding Judge,
A. P. Industrial Tribunal - Cum -
Labour Court, Shimla

Disputes Act, 1947 and the respondent has failed to prove on record that the petitioner himself abandoned the job but there is nothing on record which could go to show that the petitioner abandoned the job of his own. It is not proved on record by the respondent that the petitioner himself left the job of his own. It is well settled incase titled as State of HP & Others Vs. Bhatag Ram & Another as reported in latest HLLJ 2007 (HP) 903 in which it was held that:-

"Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea."

I have also scrutinized the evidence on record and there is no iota of evidence on record to show that the petitioner has abandoned the job of his own and therefore, it can safely be concluded that the petitioner has not abandoned the job of his own. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and as such the reference is answered in affirmative and the petitioner is ordered to be



[Signature]
Judge,
Industrial Tribunal - Cum -
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reinstated in service forthwith with seniority and continuity in service. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 14th Day of May 2009 in the presence of parties counsels.

(Parveen)



[Signature]
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.

Ref. No. 173 of 2006.
Instituted on 26-12-2006.
Decided on. 23-5-2009.

Khub Chand S/o Shri Tulsi Ram R/o Village Sharog, P.O Thachi, Tehsil Sunni District Shimla, HP.

. .Petitioner.

Vs.

The Executive Engineer, HPSEB Division Suni, Tehsil Suni, Distt. Shimla HP.

. .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.R Sharma, Ld. Csl.
For respondent : Respondent already exparte.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:-

“Whether the termination of services of Shri Khub Chand S/o late Shri Tulsi Ram workman by the Executive Engineer, HPSEB Division Suni, Tehsil Suni, District Shimla HP w.e.f. 20.12.1998 without complying the provisions of the Industrial disputes Act, 1947 whereas junior to him are retained by the employer as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed a claim asserting therein that he was appointed as beldar w.e.f. 1987 with the respondent and continued to work till 20.12.1998 whose services were orally and illegally terminated by the respondent without assigning any cogent reason and that the petitioner had completed 240 days in a calendar year preceding his termination and that the petitioner has unblemished record of his service and never gave any opportunity of complaint and that the petitioner made several requests seeking reengagement by visiting the office of the respondent number of times but all in vain and the respondent recruited fresh hands into the employment, even retained the juniors S/Shri Gian Chand, Madan Lal, Om Parkash, Chet Ram, Kanshi Ram, Mahinder Kumar, Niwa Nand, Girdhari Lal, Yugal Kishore, Narinder Kumar, Roshan Dass and Besar Dass, who are still working with the respondent and that no notice as required under section 25-F of the Industrial disputes Act, 1947 was issued to the petitioner and as such the action of the employer in orally terminating the services of the petitioner and retaining junior persons clearly violative of last come first go principle and that there is plenty of work available with the employer and that the termination of the petitioner by the employers have been done not in a good faith but in a colorable exercise of the employers right and by way of victimization and as such prayed for reinstatement with all consequential benefits including continuity of service, seniority and back wages and regularization, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability, no enforceable cause of action, delay and laches and the petition has not been properly instituted and constituted. On merits, it is contended that the petitioner was engaged as daily waged beldar w.e.f. 26.2.1987 and continued to work upto 25.12.1998 with certain breaks and the services of the petitioner were terminated w.e.f. 26.12.1998 after serving 10 days notice and the mandays chart of the petitioner is annexure R-II and that the petitioner was engaged as daily waged beldar against a specific work near his home village and after completion of seasonal work, his services were discontinued/terminated after serving 10 days notice and that the petitioner filed an application before the Administrative Tribunal and the Tribunal stayed the termination orders on 3.3.1999 and directed the respondent to reengage the petitioner and that number of 240 working days in any calendar year w.e.f. 1987 to 1998 has not been completed by the petitioner nor any junior/fresh person had been retained/engaged except those directed by the Courts and as such prayed for dismissal of the claim.

4. No rejoinder filed. The following issues were framed by this Court on 19.5.2008 on the pleadings of the parties:

1. Whether the termination of services of Shri Khub Chand workman of HPSEB Division Suni Tehsil Suni w.e.f. 20.12.1998 is illegal without complying with the provisions of the Industrial disputes Act, 1947 as alleged? . . OPP.

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? . .OPP.
3. Whether the petition is not maintainable as alleged? . . OPR.
4. Whether the petition has not properly instituted and constituted as alleged? . .OPR.
5. Relief.

5. The respondent did not put in appearance nor his counsel appeared on 3.11.2008 and consequently the respondent was proceeded against exparte.

6. I have heard the Ld. Counsel for the petitioner and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes.
Issue No. 2	Entitled for Reinstatement alongwith seniority and continuity but without back wages.
Issue No. 3	No.
Issue No. 4	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1:

8. Coming to this issue, the petitioner in his exparte evidence examined himself as PW-1, who has stated that he was engaged as daily wages beldar by the respondent in the year 1987 and continued as such till 1998 and then he was terminated from service without notice and without compensation, who had worked for more than 240 working days in every calendar year preceding his termination and the mandays chart is mark A and the seniority list of the workmen is mark B and the respondent has engaged his juniors S/Shri Gian Chand, Ritu Raj and Besar Dass and as such prayed for reinstatement in service with all consequential benefits including back wages.

9. I have considered the respective contention of the petitioner and have scrutinized the record of the case.

10. Inview of un rebutted exparte evidence on record, I am satisfied that the petitioner was engaged as daily wages beldar by the respondent in the year 1987 who worked as such till 20.12.1998 and thereafter his services were terminated by the respondent without any basis and without notice and compensation, who had worked for more than 240 working days in a calendar year preceding his termination and even his juniors Gian Chand, Ritu Raj and Besar Dass are retained by the respondent department and obviously therefore, the petitioner has a good case for his reengagement having worked for more than 240 working days in every calendar year preceding his termination and even his juniors Gian Chand, Ritu Raj and Besar Dass are still continuing with the respondent and as such the case of the petitioner squarely falls under section 25-F read with sections 25-G & H of the Industrial disputes Act, 1947. Accordingly issue no.1 is decided in favour of the petitioner and against the respondent holding that the termination of services of the petitioner a workman of HPSEB division Suni w.e.f. 20.12.1998 is illegal and without complying with the provisions of Industrial disputes Act, 1947.

Issue No. 2:

11. Since I have held under issue no.1 above, that the termination of the petitioner w.e.f. 20.12.1998 is illegal and improper, hence the petitioner is entitled to be reinstated in service forthwith with seniority and continuity. However, the petitioner is not entitled for back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his illegal termination. Accordingly, issue no.2 is decided in favour of petitioner and against the respondent.

Issue No. 3 :

12. In support of these issues, no evidence was led by the respondent being the legal issue. However, I find nothing wrong with the petition which is perfectly maintainable in the present form. Accordingly, the issue is decided in favour of petitioner and against the respondent.

Issue No. 4 :

13. In support of this issue, no evidence was led by the respondent as to how the petition is not properly instituted and constituted. In view of no such evidence on record, I hold this issue in negative holding that the petition is properly instituted and constituted.

RELIEF

As a sequel to my above discussion and findings on issue no.1 to 4, the claim of the petitioner succeeds *ex parte* and as such the reference is answered in affirmative and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity in service. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 23rd Day of May 2009 in the presence of Ld. Csl. for petitioner.

J. S. MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.

Ref No. 102 of 2001.
Instituted on 22-6-2001.
Decided on. 25-5-2009.

Joginder Singh S/o Shri Khajan Chand, R/o Village Majhwar, P.O Jalpehar, Tehsil joginder Nagar, District Mandi, HP.
Petitioner.

Vs.

The Executive Engineer, HP State Electricity Board, Bhawa Nagar, District Kinnaur, HP.

. . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri N.L Kondal, Ld. AR.
For respondent : Shri Bhagwan Chand, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:—

“Whether the termination of services of Shri Joginder Singh workman without any prior notice and compensation by the Executive Engineer, HP State Electricity Board, Bhawa Nagar, District Kinnaur, HP w.e.f. 19.4.1989 is legal and justified? If not, to what relief and amount of compensation, Shri Joginder Singh is entitled for?”

2. The petitioner has filed a claim asserting therein that he was engaged by the respondent w.e.f. 21.12.1994, who continued till 19.4.1989 and that the services of the petitioner were disengaged orally on 19.4.1989 without any notice, charge sheet, enquiry and retrenchment compensation and that the petitioner had worked for 240 days in the each calendar year, who approached the respondent for work but all in vain and that without following the mandatory provisions of section 25-F of the Industrial disputes Act, 1947 is illegal and even the services of the juniors were not disengaged by the respondent, who are still working with the respondent and as such prayed for reinstatement in service with full back wages and seniority, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply inter alia raising preliminary objections that the petitioner has no enforceable cause of action against the respondent and that no legal or vested right of the petitioner has been infringed or violated by the respondent and is barred by delay and latches. On merits, it is contended that the petitioner was engaged on daily wages basis as helper w.e.f. 21.12.1984, who served upto 19.4.1989 whose services were never terminated by the respondent, who proceeded on leave on 19.4.1989 and then the petitioner never joined, who was transferred to Nathpa Jhakri Construction Circle no.1 vide letter dated

5.4.1989 who was relieved w.e.f. 31.5.1989 in absentia with the direction to join his duties in the office of Executive Engineer, Nathpa Jhakri Const. Division no.III vide letter dated 31.5.1989, who never resumed his duties after 18.4.1989, hence there was no necessity to comply with the provisions of section 25-F of the Industrial disputes Act, 1947 and that the petitioner never completed 240 days service continuously in any 12 calendar months, who was never terminated from service and abandoned the job of his own and as such prayed for dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 8.7.2002 on the pleadings of the parties:

1. Whether the termination of the petitioner is illegal as alleged? . .OPP.
2. Whether the petition is not maintainable because of the delay and laches as alleged? . .OPR.
3. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No.1	Yes.
Issue No. 2.	No.
Relief.	Reference answered in Affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1 :

8. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he had joined the employment of the respondent as daily wages helper on 21.12.1984 in Bhawa Construction Division no.1 at Bhawa Nagar, who continuously worked upto 19.4.1989, who had completed 240 days of service during each year, who was getting casual, earned and medical leave as per certified standing orders framed by HPSEB, who was on one day casual leave on 19.4.1989. On 20.4.1989, when he reported for duty in the morning, he was told that the work at Bhawanagar had come to an end and then he was transferred to Nathpa Jhakri Project and the transfer orders were likely to be issued within 10-15 days, who remained there upto 10.6.1989 by which time all other workmen were issued transfer order and when he enquired about his transfer orders, he was told that the same has been sent to his home address but no such orders were sent to his home address, who again went to the respondent and enquired about the same on which he was again given the same reply and then he made representation to the concerned authorities, copies of which are Ex. P1 to P6, who had not left the job on 19.4.1989, who was terminated on 20.4.1989 and even neither any notice nor compensation was paid to him, who was not paid the wages for the period 1.4.1989 to 19.4.1989 and juniors to him S/Shri Prem Singh and Prabhat Singh were retained and Mast Ram was also working with him and no relieving orders were issued to the petitioner, who was not issued the show cause notice and no enquiry was held against him and as such prayed for reinstatement in service along with consequential benefits including back wages, continuity in service and seniority.

9. To rebut the case of the petitioner, the respondent has examined RW-1 Er. Rajesh Guleria, who has stated that the petitioner was working on daily wages basis at Bhawanagar w.e.f. 21.12.1984 to 19.4.1989, who went on leave after 19.4.1989 by giving an application, who did not join his duties and on 5.4.1989, the petitioner was transferred to NJPC Nathpa Jhakri Project and two other workmen were transferred from Bhawa construction Division and the petitioner was intimated that he has been transferred vide letter Ex. RX and letter mark A, who was relieved alongwith Mast Ram to Nathpa Jhakri Project and the relieving orders were served upon the petitioner and also sent to his home address in the presence of Mast Ram, the petitioner was duly informed with letter Mark RA and the petitioner is not entitled to his reengagement and he did not give any notice to the petitioner of his termination, who was duly informed about his transfer, who voluntarily did not join his duties at Nathpa Jhakri, who left the job of his own.

10. The case of the petitioner is that he being the daily wages helper having worked for more than 240 days in each calendar year preceding his termination and his termination without notice and compensation is illegal and even no enquiry was conducted by the respondent against him and as such he is entitled for reinstatement with all consequential benefits.

11. On the contrary, the respondent contends that the petitioner was not terminated from service, who was simply transferred to Nathpa Jhakri Project, who failed to report for duties at Nathpa Jhakri Project, who himself left the job of his own, hence is not entitled to any relief.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged as daily paid helper by the respondent on 21.12.1984, who continued as such till 30.4.1989 as is evident from the mandays chart of the petitioner placed on record. No doubt, that the respondent has tried to establish on record that the petitioner has abandoned the job of his own but there is nothing on record which could show that the respondent had issued any letter to the petitioner to resume his duties and further the petitioner has levelled the allegations that the respondent has engaged his juniors namely Prem Singh, Mast Ram and Prabhat Singh but it is significant to note that the respondent has not cross-examined the petitioner on the point of retaining juniors to the petitioner in service, who are still continuing in service. In the absence of cross-examination on the point to retaining of juniors of petitioner, it can safely be concluded that the respondent has admitted the case of the petitioner as the allegation of the juniors retained in service stands unchallenged and it is well settled that where the one party asserts any point which is not countered and cross-examined by the respondent which goes to show that the respondent has admitted the claim of the first party.

14. Now adverting to the other aspect of the case, it is also borne out from the record that no enquiry was conducted by the respondent against the petitioner to the effect that the petitioner has abandoned the job of his own and further no notice nor any letter was served upon the petitioner to resume his duties. Apart from it, the respondent has admitted as RW-1 that the petitioner had worked at Bhawanagar w.e.f. 21.12.1984 to 19.4.1989 and the respondent has nowhere stated that the petitioner has not completed 240 working days in any calendar year preceding his termination. It is also significant to note that the respondent as RW-1 has admitted that the petitioner had worked as per mandays chart appended with the reply of the respondent and if we calculate the working days put in by the petitioner w.e.f. 1.5.1988 to 30.4.1989 as per the mandays chart appended with the reply, it is crystal clear that the petitioner has put in 321 ½ working days in 12 calendar months preceding his termination and the respondent has failed to serve notice to the petitioner nor paid any compensation at the time of his termination which is clear violation of section 25-F read with sections 25-G and H of the Industrial Disputes Act, 1947. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent holding that the termination of the petitioner is illegal and improper.

Issue No.2:

15. In support of this issue, no evidence was led by the respondent being the legal issue. However I find nothing wrong with this claim of the petitioner which is perfectly maintainable because there is no limitation under the Industrial Disputes Act, 1947 as it was held by their lordships of Hon'ble Supreme Court as reported in (1999) 6 SCC 82 incase titled as Ajayab Singh Vs. Sirhind Co-operative Marketing -cum- processing Service Society Limited and Another. in which it was held that:-

“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Thus, on the strength of this ruling, it can safely be concluded that this petition is not barred owing to delay and laches, hence is maintainable. Accordingly, issue no.2 is decided against the respondent and in favour of the petitioner.

RELIEF

As a sequel to my above discussion and findings on issue no.1 & 2, the claim of the petitioner succeeds and is hereby allowed as a result of which the reference is answered in affirmative and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 25th Day of May 2009 in the presence of parties counsels.

J. S. MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, HP.**

Ref No. 125 of 2004.

Instituted on 13-9-2004.

Decided on. 26-5-2009.

Fouj Ram S/o late Shri Budh Ram R/o Village and P.O Reog, Tehsil Suni, District Shimla, HP.

. .Petitioner.

Vs.

1. The Commissioner, Municipal Corporation, Shimla 171001.

2. The Architect (Planner) Municipal Corporation, Shimla-1.

. .Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.R Sharma, Ld. Csl.

For respondent : Shri Sandeep Dutta, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:—

“Whether the termination of services of Shri Fauj Ram S/o late Shri Budh Ram ex daily wages beldar by the Commissioner, Municipal Corporation, Shimla 171001 (2) the Architect (Planner) Municipal Corporation, Shimla 171001 w.e.f. 21.2.2001 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits Shri Fauj Ram is entitled to?”

2. The petitioner has filed a claim asserting therein that he was initially appointed as daily rated beldar on 3rd July, 1997 in the respondent corporation and remained till 31.7.1999 and keeping in view the satisfactory work of the petitioner, the respondents converted and upgraded the designation of the petitioner as supervisor and then the petitioner remained working in the capacity of supervisor w.e.f. 1.8.1999 till 20.2.2001 and on 21.2.2001 when the petitioner reported for duties, the respondents straightway refused to allow him to work whose services were terminated and after the illegal and oral termination of services of the petitioner, he visited the office of the respondents for reengagement but without avail and ultimately, the petitioner constrained to approach the Administrative Tribunal and the Tribunal granted the interim order in favour of the petitioner vide order dated 20.4.2001, who submitted his joining report but the respondents were keeping malafide intention/attitude with the petitioner and issued transfer order dated 25.4.2001 to the petitioner and as per the orders of the respondents, the petitioner reported for duties in the office of the Executive Engineer-II (B&R) M.C Shimla and submitted his joining report which was not accepted by the Executive Engineer and transferred the petitioner in the office of Junior Engineer (EAE) (R&B) MC Shimla and then the petitioner further reported for duties on 28.4.2001 and submitted his joining report and though the petitioner was issued muster roll but it is very strange that he was marked absent without any rhyme or reason, who was regularly attending the office of the respondent and that the petitioner during his entire service career has always obeyed all the orders passed by his superiors, who has worked to the entire satisfaction of his superiors, who has worked for more than 240 days in each calendar year w.e.f. 3rd July, 1997 to 31st July, 1999 as beldar and 1st August, 1999 to 20.2.2001 as supervisor, who has worked for more than 240 days even preceding to the date of his termination and that the respondents were under legal obligation to issue notice upon the petitioner as envisaged under section 25-F of the Industrial disputes Act, 1947 and to pay retrenchment compensation and as such the termination of the petitioner from

service is in gross and palpable violation of the law of the land and that the respondents while terminating the services of the petitioner did not care to the well settled principles of last come first go as his juniors S/Shri Sanjeev, jai Parkash, Baldev and Yog Raj are still working with the respondent which is clear violation of sections 25-G & H of the Act and that the applicant belongs to a poor family and is a sufferer at the hands of the respondent without his fault, who is out of job since 2001 and as such prayed for reinstatement at the same place and post where he was working prior to his illegal termination with full back wages, seniority and other consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply inter alia raising preliminary objections of maintainability and that the petitioner has no cause of action against the respondents and that the petitioner has not come to the court with clean hands, who suppressed the material facts from the Court. On merits, it is contended that the petitioner was initially engaged in the Health Department of Municipal Corporation, Shimla as daily wages beldar from November, 1997 to Sep. 1998 and then the petitioner worked on contract basis with the respondent w.e.f. 1.10.1998 to July, 1999, who was further engaged as daily wages beldar on August, 1999 to April, 2000 and again on August, 2000 to Feb. 2001. It is denied that the respondent converted and upgraded the designation of the petitioner as supervisor as there is no such post with the respondent for daily wages beldar. It is denied that the respondent refused the petitioner to perform his duties as beldar. It is contended that the petitioner tampered with the muster roll where the attendance of the mazdoor is marked and then the petitioner absconded from his duties and did not report for duty and that daily wages mazdoor, skilled or unskilled worker and employees working in the Municipal Corporation, Shimla can be posted in any branch within the jurisdiction of M.C Shimla. It is also denied that the respondent violated the provisions of section 25-G & H of the industrial disputes Act, 1947 and as such prayed for dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 27.10.2005 on the pleadings of the parties:

1. Whether the termination of service of petitioner by Commissioner, Municipal Corporation, Shimla and Architect (Planner), Municipal Corporation, Shimla w.e.f. 21.2.2001 without complying with the provisions of Industrial disputes Act, 1947 is not proper and justified? If so, its effect? . . . OPP.
2. If issue no.1 is proved in affirmative, whether the petitioner is entitled for the relief claimed? . . . OPP.
3. Whether the present petition is not maintainable? . . . OPR.
4. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No.1.	Yes.
Issue No. 2.	Entitled for reinstatement (as beldar only) in service with seniority and continuity but without back wages.
Issue No.3.	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1 :

8. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged as beldar on 3.7.1997 by the respondent and after two-three months, he worked as diary dispatch clerk for eight-nine months and then he was shifted on contract, who worked under J.E in Architect Branch till Feb.2001, who was removed from service without notice and without compensation and after his termination, he approached the Administrative Tribunal and obtained the stay and joined the duties and after joining, he was transferred to Executive Engineer Office (B&R), who was again transferred to Dhalli Zone where he worked for ten days and he was marked absent in the muster roll and his juniors S/Shri Sanjeev and Yograj etc. are still working with the respondent and he approached the authorities for reengagement and as such prayed for reinstatement.

9. To rebut the case of the petitioner, the respondent has examined Er. Vivek Gupta Junior Engineer as RW-1, who has stated that the petitioner was engaged as daily wages beldar and also on contract basis with the respondent from November, 1997 to Sep. 1998 on daily wages and from 1.10.1998 to July, 1999 on contract basis, who was further engaged as daily wages beldar on August, 1999 to April, 2000 and again from August, 2000 to Feb. 2001 and the petitioner also tampered with the muster roll and remained absconding from duties due to fear of action, who also preferred a petition before the Administrative Tribunal, Shimla which ordered for his reengagement upon which the petitioner was reengaged on April, 2001, who gave his joining report but he did not join his duties, who was called upon to join his duties by Ex. R1 but he did not join his duties and the petitioner has not completed 240 working days in any preceding calendar year when he abandoned his job of his own.

10. The case of the petitioner is that he being the daily wages beldar and also worked as diary dispatch clerk and supervisor with the respondent, who was illegally terminated from service after completing more than 240 working days in a calendar year preceding his termination without notice and compensation which is illegal and even junior to the petitioner is still working with the respondent department and as such he is also entitled for reinstatement in service with all consequential benefits.

11. On the contrary, the respondent contends that the petitioner was not terminated from service, who left the job of his own without any intimation to the respondent corporation and even a letter was issued to the petitioner to resume his duties but the petitioner failed to report for duties. Moreover, the petitioner was engaged as beldar on daily wages, who was never performed his duties as supervisor and clerk, hence the petitioner is not entitled to any relief.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, no doubt that the petitioner has tried to establish on record that he has also worked as diary dispatch clerk and the supervisor with the respondent but the petitioner has failed to produce any order in order to show that he had worked as supervisor and clerk with the respondent corporation nor there is any iota of evidence on record to show that he was directed to perform his duties as clerk/supervisor by the respondent corporation as no office order was produced by the petitioner nor any witness from the office of the respondent corporation was examined by the petitioner in support of his contention.

14. Now, advertent to the other aspect of the case, it is clear that the petitioner was engaged by the respondent corporation as beldar, who worked with the respondent till April, 2001 which fact is not disputed by the respondent. Apart from it, the petitioner has proved on record that his junior S/Shri Sanjeev and Yog Raj and Others are still working with the respondent corporation. It is significant to note that the respondent has not cross-examined on the point of alleged juniors working with the respondent corporation. It is well settled that where one party alleges something which is not controverted by other party in cross-examination, it is deemed to have admitted the case of the petitioner. In the instant case, the petitioner has categorically stated that his juniors S/Shri Sanjeev and Yog Raj are still working with the respondent corporation which is not refuted by the respondent corporation in its cross examination and since it is proved on record that the persons junior to the petitioner are still continuing and thus there is breach of section 25-G & 25-H of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordships of ***Hon'ble Supreme Court incase titled as State of Haryana Vs. Dilbag Singh reported in 2007 LLR 72 SC*** in which it was held that :

“Where Labour found that person junior to respondent was still working and thus there was breach of section 25-G & 25-H of the Act. Court directed reinstatement with 50% back wages.”

Similarly our own Hon'ble High Court of HP has held incase titled as *State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903*. in which it was held that :-

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

Thus, having regard to entire evidence on record and inview of the fact that the juniors to the petitioner are still working with the respondent corporation which is not disputed by the respondent corporation having not cross-examined the petitioner on the point of the juniors still continuing with the respondent corporation and obviously therefore, I have no hesitation in coming to the conclusion that the juniors to petitioner S/Shri Sanjeev & Yog Raj are still working with the respondent corporation and as such the termination of services of Shri Fauj Ram petitioner an ex daily wages beldar by the Commissioner M.C Shimla and the Architect (Planner), M.C Shimla w.e.f. 21.2.2001 without complying with the provisions of I.D Act, 1947 is improper and unjustified as the respondent has violated the principle of first come last go and also violated the provisions of sections 25-G & H of the Industrial disputes Act, 1947. Accordingly issue no.1 is decided in favour of petitioner and against the respondent.

Issue No. 2 :

15. Since I have held under issue no.1 above that the termination of services of the petitioner by the respondents without following with the provisions of Industrial Disputes Act, 1947 is not proper, hence the petitioner is held entitled to reinstatement in service of **beldar** on daily wages only alongwith seniority and continuity. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided against the respondent and in favour of the petitioner.

Issue No. 3 :

16. In support of this issue, no evidence was led by the respondent being the legal issue. However, I find nothing wrong with this petition which is perfectly maintainable. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service forthwith as **beldar** only with seniority and continuity. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 26th Day of May 2009 in the presence of parties counsels.

J. S. MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Ref.121 of 2006

Sh.Jasvinder Singh V/s Management M/s Ozone Ayur. Ltd. Baddi
16.5.2009:-

Present:- None

It is 3.44 P.M. Case is called in the pre and post lunch sessions but none appeared on behalf of the parties. It seems that the parties are not interested to pursue this case. Accordingly, the claim of the petitioner is dismissed in default and the reference is answered accordingly. Let a copy of this order be sent to the appropriate government for publication in official. File, after completion, be consigned to records.

Announced:
16.5.2009

Sd/-
Presiding Judge,
Labour Court, Shimla.

Ref. 239/2003

Sh. Kehar Singh V/s HPSEB Divi, Rampur, Distt Shimla.

4.5.2009

Present:-

None for the petitioner.
Sh. Bhagwan Chand, Ld. Csl. for respondent

Today the case is listed for respondent evidence but no appearance put in the by the petitioner nor by his council. It is 4.44 P.M. Case is called in the pre and post lunch sessions but none appeared on behalf of the petitioner. It seems that the petitioner has no interested to pursue the case. Accordingly, the claim of the petitioner is dismissed in default and the reference is answered accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced:
4.5.2009

Sd/-
Presiding Judge,
Labour Court, Shimla.

Ref.118 of 2006

Sh Avtar Singh V/s Management M/s Ozone Pharmaceutical Ltd Baddi.

16.5.2009

Present:- None.

It is 3.44 P.M. Case is called in the pre and post lunch sessions but none appeared on behalf of the parties. It seems that the parties are not interested to pursue the case. Accordingly, the claim of the petitioner is dismissed in

default and the reference is answered accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced:

4.5.2009

Sd/-
Presiding Judge,
Labour Court, Shimla.

Ref. 34/2007

Sh Ram Lal V/s D.G.M.Satluj Jal Vidyut Nigam Ltd.

8.5.2009:-

Present:-

None for the petitioner.

Sh S.D.Sharma, Ld.Csl, for the respondent.

It is 4.15 P.M. Case is called in the pre and post lunch sessions but none appeared on behalf of the Petitioner. It seems that the petitioner has no interested to pursue the case. Accordingly, the claim of the petitioner is dismissed in default and the reference is answered accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced:

4.5.2009

Sd/-
Presiding Judge,
Labour Court, Shimla.

Ref.5/2006

Smt Kamlesh V/s C.E.O. Shimla.

12.5.2009:-

Present:-Petitioner with Ms. Anu Tuli,Ld.Csl.for petitioner.

Sh Rupesh Sharma, Ld.Csl. for respondent.

Hears. The claim of the petitioner stands satisfied. Let her statement be recorded on oath.

Statement recorded separately. I am satisfied that the petitioner has made the statement voluntarily without any extraneous influence on her and hence, the claim of the petitioner is dismissed as having been satisfied as a result of which the reference is ordered to be answered accordingly. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

8.5.2009

Sd/-
Presiding Judge
Labour Court, Shimla.

Ref.22/2007

The President Himachal Kandi Project Workunion V/s Asstt. Project Nalagarh.

4.5.2009:-

Present:-

None for the petitioner.

Sh.Krishan Lal .Ld,AR for respondent.

It is 4.28 P.M. Case is called in the pre and post lunch sessions but none appeared on behalf of the Petitioners. It seems that the petitioners has no interested to persue the case. Accordingly, the claim of the petitioners is dismissed in default and the reference is answered accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced:

4.5.2009

Sd/-

*Presiding Judge,
Labour Court, Shimla.*

Ref.30/2007

Smt. Lalita Jinded V/s DFO Solan

12.5.2009:-

Present:- None for the petitioner.

Sh Jagdish Kanwar, Ld.Csl, for the respondent.

It is 4.44 P.M. Case is called in the pre and post lunch sessions but none appeared on behalf of the Petitioner. It seems that the petitioner has no interested to persue the case. Accordingly, the claim of the petitioner is dismissed in default and the reference is answered accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced:

12.5.2009

Sd/-

*Presiding Judge,
Labour Court, Shimla.*

Ref. 158/2003

Sh Jagdish Singh V/s Manager Partner, M/s Ashiana Bar & Restrurant.

8.5.2009

Present:-Sh. Peeyush Verma, Ld.Csl for the petitioner.

Sh.Rajesh Verma , Ld, Csl. for the respondent.

Sh Peeyush Verma, Ld. Csl for petitioner submits at the bar that the matter stands compromised with the respondent and as such he does not want to press this claim. Let his statement be recorded.

Statement recorded separately. In view of his statement, the claim of the petitioner is dismissed as compromised and as such the reference is ordered to be answered accordingly. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

8.5.2009

Sd/-
Presiding Judge
Labour Court, Shimla

HIGH COURT OF HIMACHAL PRADESH, SHIMLA - 171 001

NOTIFICATIONS

Shimla, the 27th August, 2009

No. HHC/Admn.3(359)92.—10 days earned leave on and with effect from 2-9-2009 to 11-9-2009 with permission to suffix 2nd Saturday and Sunday falling on 12-9-2009 and 13-9-2009 is hereby sanctioned in favour of Sh. M. R. Rolta, Court Secretary of this Registry.

Certified that Sh. M.R. Rolta is likely to join the same post and at the same station from where he proceeds on leave after the expiry of the above leave period.

Certified that Sh. M.R. Rolta would have continued to officiate the same post of Court Secretary but for his proceeding on leave.

Shimla, the 25th August, 2009

No. HHC/Admn.3(117)78-I.—3 days commuted leave with effect from 11-8-2009 to 13-8-2009 with permission to suffix gazetted holidays falling from 14-8-2009 to 16-8-2009 is hereby sanctioned, ex-post-facto, in favour of Shri Tek Ram, Secretary, of this Registry.

Certified that Shri Tek Ram has joined the same post and at the same station from where he had proceeded on leave after the expiry of the above leave period.

Certified that Shri Tek Ram would have continued to officiate the same post of Secretary but for his proceeding on leave.

Shimla, the 22th August, 2009

No. HHC/Admn.3(149)/80-I.—6 days earned leave on and with effect from 24-8-2009 to 29-8-2009 with permission to affix Sundays falling on 23-8-2009 and 30-8-2009 is hereby sanctioned in favour of Shri Faryad Bhatti, Assistant Registrar, of this Registry.

Certified that Shri Faryad Bhatti is likely to join the same post and at the same station from where he proceeds on leave after the expiry of the above leave period.

Certified that Shri Faryad Bhatti would have continued to officiate the same post of Assistant Registrar but for his proceeding on leave.

Shimla, the 25th August, 2009

No. HHC/Admn.3(111)/77-I.—4 days commuted leave with effect from 10-8-2009 to 13-8-2009 with permission to prefix 2nd Saturday and Sunday falling on 8th and 9th August, 2009 and suffix gazetted holidays falling from 14-8-2009 to 16-8-2009 is hereby sanctioned, ex-post facto, in favour of Sh. J.D. Sharma, Assistant Registrar, of this Registry.

Certified that Sh. J. D. Sharma has joined the same post and at the same station from where he had proceeded on leave after the expiry of the above leave period.

Certified that Sh. J.D. Sharma would have continued to officiate the same post of Assistant Registrar but for his proceeding on leave.

Shimla, the 6th August, 2009

No. HHC/Admn.3(139)/79-I.—6 days commuted leave on and with effect from 23-7-2009 to 28-7-2009 is hereby sanctioned, ex-post-facto in favour of Sh. Kamal Kishore, Court Secretary, of this Registry.

Certified that Sh. Kamal Kishore has joined the same post and at the same station from where he had proceeded on leave after the expiry of the above leave period.

Certified that Sh. Kamal Kishore would have continued to officiate the same post of Court Secretary but for his proceeding on leave.

Shimla, the 31st, July, 2009

No. HHC/Admn.16 (15)74-IV.—Hon'ble the Chief Justice, in exercise of the powers vested in him U/S 139(b) of the Code of Civil Procedure, 1908, U/S 297(b) of the Code of Criminal Procedure, 1973 and Rule 5(vi) of the H.P. Oath Commissioners (Appointment & Control) Rules, 2007 has been pleased to appoint Sh. D.D. Sharma, Advocate as Oath Commissioner at Kandaghat, H.P. for a period of two years, with immediate effect, for administering oaths and affirmations on affidavits to the deponents, under the aforesaid Codes and Rules.

By order,
Sd/-
Registrar General.